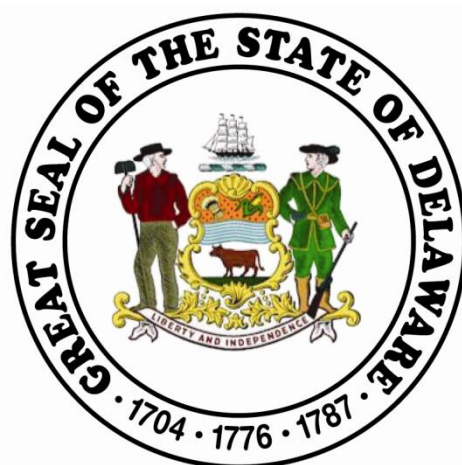


DELAWARE LEGISLATIVE DRAFTING MANUAL



Legislative Council
Division of Research

January 2017

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DELAWARE LEGISLATIVE DRAFTING MANUAL

2017 Edition

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Approved by Legislative Council September 18, 2013

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PREFACE TO THIS EDITION

The *Delaware Legislative Drafting Manual* has served as a guide to drafters since at least the 1970s. The manual endured a comprehensive overhaul in 2013, resulting in a modern, updated guide for legislative drafters both in and outside of Legislative Hall. We again updated the manual in 2015 to correct technical errors and expand on several drafting concepts.

The goal of this manual is, as it has always been, to assist drafters in creating the most legally and grammatically sound legislation possible. The better the drafting, the stronger the legislation. A thoughtfully-written bill is more likely to stand against opposition and less likely to result in unintended outcomes, such as misinterpretation of the law or judicial decision rendering the law invalid.

Shunryu Suzuki, Zen monk and teacher, once offered that “everything is perfect, but there is a lot of room for improvement.” He was presumably referring to the search for inner peace, but we like to think the same applies to drafting in general and this manual specifically.

To that end, we present this updated manual, which includes several improvements:

- Additional guidance on how to draft effective dates, including contingent effective dates, and the possible consequences of failing to draft them carefully.
- Drafting series and tabulations to avoid the doctrine of the last antecedent.
- Additional guidance in drafting from model acts.
- Updated examples in the appendices.

Starting in November 2016, a new drafting program, DELIS, went live. We have therefore replaced any reference to the former program, LIS. For now, instruction regarding DELIS is available separate from the *Delaware Legislative Drafting Manual*.

As with previous editions, this edition is the result of the comments, suggestions, and experiences of its users during the preceding year. We are grateful to all those drafters inside and outside of Legislative Hall who shared their drafting issues and solutions, especially the staff attorneys for the Judicial Branch. A special thank you goes out to Carolyn Meier, Senior Legal Analyst for LexisNexis, for her invaluable advice and technical support from the perspective of code revision, and to Rich Dillard, for his wealth of institutional knowledge.

Please continue to contact us to help the Division maintain a manual that aids drafters in producing the accurate, clear, and uniform legislative product that Delaware deserves.

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Division of Research
January 2017

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PREFACE TO THE 2013 EDITION

To be sure, laws can measurably be improved with improvement in the mechanics of legislation, and the need for interpretation is usually in inverse ratio to the care and imagination of [drafters] . . .

Felix Frankfurter, 1882-1965; U.S. Supreme Court Justice, 1939-1962

Justice Frankfurter's words are included again in this edition as a sort of mission statement for this manual, reflecting its goal to serve as a resource to improve the mechanics of the General Assembly's legislative product by encouraging accuracy, clarity, and uniformity.

In preparing this manual, we have drawn extensively upon Delaware's previous bill drafting manuals, the 1993 *Bill Drafting Manual* and the 2007 *Drafting Delaware Legislation*. The contributions of Thomas Shiels and Ali Stark, as the editors of those editions of the manual, have been instrumental to this edition.

As with the 2007 edition, this manual is born from ideas found in other bill drafting manuals, including: the National Conference of Commissioners on Uniform State Laws' *Drafting Rules* (2012), the *Arkansas Legislative Drafting Manual* (2010), the *Maine Legislative Drafting Manual* (2009), the *Maryland Legislative Drafting Manual* (2013), the *Minnesota Revisor's Manual* (2013), the *North Dakota Legislative Drafting Manual* (2013), and the *Texas Legislative Council Drafting Manual* (2012). Other drafting publications that have inspired this manual include: Lawrence Filson's and Sandra Strokoff's *The Legislative Drafter's Desk Reference* (2008), Tobias A. Dorsey's *Legislative Drafter's Deskbook* (2006), Reed Dickerson's *The Fundamentals of Legal Drafting* (1986) and Charles Nutting and Reed Dickerson's, *Cases and Materials on Legislation* (1978). We gratefully acknowledge our debt to these sources.

This manual would not have been possible without advice and input from all of those involved in drafting legislation, including: Bill Bush, Rich Dillard, Ron Smith, Tim Willard, and Rochelle Yerkes. Special thanks to Judi Abbott, who provided much needed proofreading, word processing, and style advice and assistance, and Rebecca Byrd, who provided encouragement and knowledge. Not to be forgotten are those involved with the technical aspect of legislation in the Print Shop and Legislative Information Systems whose experiences in these fields have provided important insight for this edition. Finally, Carolyn Meier, Senior Legal Analyst for LexisNexis, provided invaluable advice from the perspective of code revision and drafted Part II, Chapter 4 regarding Searching the Delaware Code Online.

The manual has always been an ever evolving document aimed at producing an accurate, clear, and uniform legislative product. In that spirit, the Division of Research welcomes comments, criticism, and suggestions for improvements to future revisions to the manual. Please contact me at (302) 744-4114 or mark.cutrona@state.de.us.

Mark J. Cutrona
Deputy Director, Division of Research
November 2013

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PART I: INTRODUCTION.

Chapter 1: Purpose, Audience, and Organization of this Manual.

[T]he right in the people to participate in the Legislature, is the foundation of liberty and of all free government

Declaration of Rights and Fundamental Rules of the Delaware State, as enacted September 11, 1776

Since 1704, the General Assembly has been the root of democracy in this State and the citizens' voice in their government. Nearly 310 years since its first meeting, the General Assembly continues to exercise the legislative power of this State, to preserve the peace and good order of society through the legislative process.

This manual, the latest in a long line of bill drafting manuals prepared by the Legislative Council's Division of Research, is intended to serve as a resource for legislators, legislative staff, and others who desire to participate in their government. As such, its dual purpose is to serve as a primer for the novice drafter and a reference manual for the veteran drafter. Above all, for both the novice and the veteran, this manual is intended to serve as a guide to the creation of an accurate, clear, and uniform legislative product. The alternative is inaccurate or careless drafting, which can produce bad laws or lead to legislation being invalidated, frustrating legislative intent.

While legislative drafting is the chief purpose of this manual, this edition reimagines this manual as a guide through the legislative process from the formulation of the legislative idea to its incorporation into the Delaware Code ("the Code"). After the introductory material in this part, this manual begins in Part II with a discussion of the meaning of legislative drafting, the basic steps in the drafting process, and the search for current governing law. Next, in Part III, this manual discusses the drafter's selection of the correct legislative vehicle for the idea and provides insight into the form and format of the legislative vehicles. Also, beginning with Part III, this manual incorporates into the text and footnotes¹ the legal backdrop of the legislation drafting process. Part IV provides a thorough description of the strike through and underline process adopted with the enactment of Senate Bill 63, which amended § 109(d) of Title 1. Part V discusses the proper amendment format for legislation, specifically legislation drafted using the strike through and underline process. Relatedly, the sample legislation provided in the Appendix contains legislation drafted using the strike through and underline process and the proper amendment format. Part VI serves as the style guide for Delaware legislation and provides principles for good drafting aimed at increasing the accuracy, clarity, and uniformity of legislation. Part VII consists of a review of the legislative process after the drafter's legislation is finalized and ready for introduction. Finally, this manual closes with the Appendix, which contains: sample legislation reflecting the rules and standards in this manual; model legislation related to task forces; important Delaware cases; legislation drafting checklists for bills, amendments, and resolutions; the provisions of Title 1, Chapter 3 regarding interpretation of

¹ Footnotes containing citations to Delaware specific material follow the legal citation rules in *Delaware Uniform Citation* (2007). According to the rules, citation references to Delaware courts are abbreviated as follows: "Del." for the Supreme Court, "Del. Super." for the Superior Court, "Del. Ch." for the Court of Chancery, "Del. Fam." for the Family Court, and "Del. Com. Pl." for the Court of Common Pleas.

statutes; a removable version of the super-majority vote requirements; and a glossary of legislative terms.

To the extent a drafting or parliamentary topic is not discussed in this manual or questions remain, the drafter should seek out additional reference materials including any of the drafting guides or state manuals discussed in the Preface, Justice Randy Holland's *The Delaware Constitution a Reference Guide* (2002), the Code, the Rules of the Senate, the Rules of the House, *Mason's Manual of Legislative Procedure* (2010), and Sutherland's *Statutes and Statutory Construction*. Many of these resources are available in the General Assembly's Legislative Library on the ground floor of Legislative Hall. Additionally, the staff of the Division of Research is available to answer questions.

Chapter 2: Notes to Drafters Outside Legislative Hall.

The General Assembly welcomes draft legislation prepared by those outside of Legislative Hall. When submitting draft legislation to legislators or legislative staff, outside drafters should keep in mind that the General Assembly uses an electronic document management system, called the Legislative Information System (DELIS). Draft legislation submitted by an outside drafter will be entered into DELIS. Therefore, the process can be expedited greatly if the outside drafter is aware of the following:

- (1) Use Microsoft Word. Microsoft Word is the word processing program used by DELIS and the General Assembly's processes are expedited by having the draft legislation in electronic form.
- (2) Use the Delaware Code Online (<http://delcode.delaware.gov/>) as the source material for any Code provisions included in the legislation. This free resource is the most accurate and up-to-date source for the Code. See Part II, Chapter 3.
- (3) Do not use the "track changes" or "highlight changes" function in Microsoft Word to show additions and deletions to the law or between multiple drafters of the piece of legislation. The General Assembly cannot input into DELIS a Word document created using these functions. These documents will have to be retyped into DELIS, delaying the processing of and risking errors in the legislation.
- (4) Follow the formatting requirements discussed in detail in Part VI, Chapter 1. Keep the document formatting as simple as possible since, just as with the "track changes" function above, failure to comply with the formatting requirements will delay the processing of the legislation. Important formatting considerations that deserve extra mention here include:
 - a. Use only one font throughout the entire document – Times New Roman 10 point.
 - b. Do not use **bold** or *italics*.
 - c. Turn off or do not use the auto numbering/auto lettering feature.
- (5) If the legislation changes Delaware law, remember to show any deletions by ~~strike through~~ and any insertions by underline. This process is discussed more in Part IV.
- (6) Ensure the draft legislation is free from viruses.
- (7) Proofread before submitting draft legislation for introduction by a legislator.

PART II: INITIAL CONSIDERATIONS IN THE DRAFTING PROCESS.

Chapter 1: Understanding Legislative Drafting.

Legislative drafting requires more definite, more exacting qualities of language, and demands greater skill in composition than other writing. Bill drafting must have the accuracy of engineering, for it is law engineering; it must have the detail and the consistency of architecture, for it is law architecture.

Charles Nutting and Reed Dickerson, *Cases and Materials on Legislation* (1978).

“Legislative drafting”, “bill drafting”, or, simply, “drafting” is often used narrowly to refer to the act of writing legislation. However, more broadly, drafting includes the process of taking an idea, refining it, and developing the language to implement it. So, a good drafter must possess analytical capabilities in addition to the ability to write. As the above quotation suggests, for as much as legislative drafting has in common with other forms of writing, such as in its conveyance of ideas and adherence to the principles of grammar, it also has as many differences. This is because legislative drafting must be precise and internally consistent, must ensure what is new fits within what is existing, must adhere to a certain form and style, and must be written to withstand the whirlwind of the legislative process and the test of time.

A manual cannot attempt to capture all of the intricacies involved in legislative drafting. Good drafting comes with experience and knowledge, both of which need to be pursued. A good drafter should have and hone these skills:

- (1) Good writing skills, including a knowledge of accepted grammar and punctuation.
- (2) Good critical thinking skills. Most drafting is thinking, not writing.² Drafters need to think about the subject matter of the legislation, the existing law, the organization of the legislation, and how the legislation will work in practice.
- (3) Knowledge of the drafting conventions in this manual.
- (4) Knowledge of the legislative process; the history, if any, of the issue in the General Assembly; and how state government is organized and functions.
- (5) Knowledge of existing constitutional, statutory, and case law and an understanding of the rules of statutory construction.

The players involved in drafting are also different than in other forms of writing. The writer here is called the “drafter”. Within Legislative Hall, the drafter can refer to the attorney who prepares the legislation or the administrative assistant who assists in that function. Outside of Legislative Hall, the drafter can include an agency’s deputy attorney general or a lobbyist. Unlike with other forms of writing, the drafter’s product is not his or her own. Instead the drafter works with the originator of the idea. Within Legislative Hall, that person is typically the sponsor of the legislation. Outside Legislative Hall, that person can be the head of an agency or an interest

² Tobias Dorsey, Presentation on Legal Thinking for Drafters, October 2012.

group. For consistency, this manual, like other manuals and legislative drafting texts, will refer to the originator of the idea as the “client”.

Chapter 2: Basic Steps in the Drafting Process.

The drafting process begins after the client forms the general idea for the legislation. The idea for legislation is formed often in response to some specific issue that has arisen due to the absence of legislation or because of a statute or regulation. It is then that the drafter becomes involved in the process. Once involved, the drafter works closely with the client to transform the idea into an effective piece of legislation. While that is often a complex process, there are some basic steps the drafter should consider:

- (1) Understand the issue to be solved or the underlying purpose of the legislation by gathering as much information about the issue from the client as is possible and, with the client’s permission, seek out others who may be able to add information. Also, understand how the client proposes to deal with the issue. The drafter does not get to set the purpose, but must understand it for the legislation to fulfill the client’s intent.
 - a. The drafter should also understand the level of confidentiality that the client wishes to maintain.
 - b. A drafter must not break the client’s confidentiality, even if the drafter believes that doing so will produce a better legislative product.
- (2) Research the existing constitutional, statutory, and regulatory situation to determine if the issue is already controlled or impacted by a legal framework. Determine if the existing legal framework will need to be changed and consider collateral impacts of those changes.
- (3) Discuss with the client the methods of resolving the issue, pointing out alternatives and their impacts.
- (4) Determine the legislative vehicle, discussed in detail in Part III, which best fulfills the client’s chosen method. Consider the impact of constitutional requirements or parliamentary procedures implicated by the chosen legislative vehicle.
- (5) Develop the organization and arrangement for the legislation and contact the client to discuss any potential problems.
- (6) Prepare a draft of the proposed legislation keeping in mind the formatting, style, and grammatical principles in this manual.
- (7) Proofread the draft for content, style, and grammar to ensure accuracy, clarity, and uniformity with this manual as a guide.
- (8) Share the draft with the client and make any additional edits proposed by the client.
- (9) Proofread the draft again (see number 7, above).
- (10) When authorized by the client, drafters outside of Legislative Hall typically release the legislation to a legislator or to legislative staff while drafters within Legislative Hall should release the legislation for numbering and printing.

If permitted by the client, a drafter should include those with expertise in the area and impacted constituencies for input into the process. However, even if allowed, time constraints may limit the drafter’s ability to do this.

Chapter 3: The Proper Legal Source Material.

In drafting legislation, a drafter should have an understanding of all of the possible sources of Delaware law. This is an important consideration for a drafter as the legislation should be based on the law in effect when it is drafted and should take into account any law that is pending before the General Assembly. Using out of date materials or not considering other sources of law can result in the drafter's legislation not being compatible with the existing Code when the Code Revisors codify the legislation. This will certainly frustrate the client's legislative intent and may result in the issue not being resolved until the next session of the General Assembly, if ever.

Below is a list of the proper legal source material in Delaware and how to locate their electronic versions:

- (1) Delaware Constitution of 1897
<http://delcode.delaware.gov/constitution/index.shtml>
- (2) Delaware Code of 1974
<http://delcode.delaware.gov/>
This is often referred to as the "Delaware Code Online."
- (3) Laws of Delaware
<http://delcode.delaware.gov/sessionlaws/>
Links to the applicable session laws that are available electronically (those dating back to the 105th General Assembly in 1935, Volume 40 of the Laws of Delaware) can also be accessed at the end of every Code provision.
- (4) Municipal Charters
<http://charters.delaware.gov/>
- (5) Delaware Administrative Code
<http://regulations.delaware.gov/AdminCode/>
The monthly Register of Regulations can be found at:
http://regulations.delaware.gov/services/current_issue.shtml

The electronic versions of the Delaware Constitution ("the Constitution"), the Code, the Laws of Delaware, and the Administrative Code are maintained by the Division of Research.³ Many of the Municipal Charters are also maintained by the Division of Research; however, since some are maintained by outside vendors on non-State websites, the Division of Research cannot assure the accuracy of these Charters.

Obviously many of these materials may also be found through LexisNexis and Westlaw and in hard copy (the Legislative Library maintains these materials in hard copy, should a drafter wish to consult them in this form). However, drafters within Legislative Hall use the electronic versions of these materials provided by the Division of Research as these are the most up to date

³ In 2014, Delaware enacted the Uniform Electronic Legal Material Act (UELMA). When UELMA became effective on October 21, 2014, Delaware became the first state to publish UELMA compliant versions of its constitution, code, administrative code, and session laws.

materials. The latest revision date for the Constitution, the Code, and the Laws of Delaware can be found at the bottom of this webpage: <http://delcode.delaware.gov/>. The Administrative Code works differently. While the Delaware Code is updated as a whole, the Administrative Code is updated by individual amendment. The date the regulation was added, deleted, or amended is found at the end of each regulation with a reference back to the monthly Register of Regulations where it first appeared.

Legislation submitted by outside drafters should be compared by drafters inside Legislative Hall to the electronic versions of the Constitution and Code before being entered into DELIS to ensure the integrity of these materials.

Additionally, a drafter must understand the impact federal law can have on state legislation. Federal sources may also need to be consulted in drafting Delaware legislation. A drafter should consult <http://fedworld.ntis.gov/govlinks.html> for access to these sources.

PART III: CHOOSING THE CORRECT LEGISLATIVE VEHICLE.

Chapter 1: Legislative Vehicles.

When the drafter has determined that legislation is the appropriate mechanism to resolve an issue, the drafter needs to determine the correct legislative vehicle to encapsulate the solution. There are two main legislative vehicles or measures: bills and resolutions. Both are explored in detail below, as are substitute bills and amendments.

Chapter 2: Bills.

A bill is the most common legislative vehicle as it can be used to create a new law, amend an existing law, repeal an existing law, or make an amendment to the Delaware Constitution. A bill is a proposed law, introduced in either the Senate by a Senator or the House by a Representative. An example of a Senate bill is provided in Appendix A-1 and an example of a House bill is provided in Appendix A-2. After a bill has passed both Chambers⁴ in identical form⁵ and has received the approval of the Governor or has otherwise been enacted, it becomes a law (this process is discussed in more detail in Part VIII). Until then, it is a bill, a draft of a proposed law.

Section 1: Types of Bills.

There are two types of bills: general bills and special bills. The majority of bills introduced are general bills, but there are numerous special bills. Each bill type requires a technical form of expression, specifically worded for its purpose. The following descriptions apply to general bills and special bills in Delaware.

A. General Bills.

A general bill, also known as a public bill, applies to all persons uniformly situated.⁶ A bill has a uniform operation if it operates equally or alike upon all persons, entities, or subjects within relations, conditions, and circumstances prescribed by the bill. A statute enacted from a general bill will repeal, by implication, a special Act on the same subject. However, a special bill enacted after a general Act on the same subject merely modifies the general law. Article II, § 23 of the Delaware Constitution creates a presumption that statutes are public laws; it states, “every statute shall be a public law unless otherwise declared in the statute itself.”

⁴ This manual refers to the Senate and House collectively as “both Chambers” and generically as “Chamber”. This is the accepted parlance within Legislative Hall.

⁵ This is required as, unlike Congress and several states, the General Assembly does not use the conference committee process.

⁶ See *Opinion of the Justices*, 252 A.2d 164, 165 (Del. 1969); *Smith v. Baltimore & O.R. Co.*, 85 A.2d 73, 74-75 (Del. Super. 1951).

B. Special Bills.

A special bill relates to a particular person or thing, or is drafted for an individual case or for a particular place or district.⁷ A bill is “special” when it applies to fewer than all the members of a class or place, either by the omission of units falling naturally within the class or place, or by the exception or reservation of enumerated units or places.

In Delaware, some special topics are prohibited by the Constitution. Article II, § 18 removed the General Assembly’s power to grant a divorce. Article II, § 19 also limits the General Assembly’s power with respect to special bills as it provides, in part:

The General Assembly shall not pass any local or special law relating to fences; the straying of live stock; ditches; the creation or changing the boundaries of school districts; or the laying out, opening, alteration, maintenance or vacation, in whole or in part of any road, highway, street, lane or alley

The reason for such a prohibition is that prior to the enactment of this provision the General Assembly spent a great deal of time “upon private matters with which the public have no concern whatever and which ought to be dealt with by general laws committing to some department of the Government the consideration of those questions.”⁸

The following are types of special bills used in Delaware and the circumstances in which special bills apply. It is important to note that structurally, these types of special bills are no different from general bills and these bills will typically not specifically be designated as a special, local, or private bill. An appropriation bill will typically be designated by name.

1. Local Bills.

A local bill is a special bill which is limited in its operation to members of a class who are in a certain part of or in a particular place within the State, instead of relating to and binding all persons or institutions of the class to which it may be applicable within the territorial boundaries of the State.⁹

2. Private Bills.

A private bill is drafted solely for the benefit of a particular individual, corporation, association, or other group. Private bills are also used for supplementary appropriations, legalizing certain marriages, and granting certain retirement benefits.

⁷ See *id.*

⁸ 3 *Debates and Proceedings of the Constitutional Convention of the State of Delaware* 2261 (1958).

⁹ See *Opinion of the Justices*, 252 A.2d at 165.

3. Appropriation Bills.

An appropriation bill is one which earmarks a certain sum of money for a specified objective in such a manner that a person administering the use of the money is authorized to use that money and no more for that objective and no other.

Section 2: Parts of a Bill.

Each bill has a caption, a title, an enactment clause, a main body which contains the basic provisions of the bill, and a synopsis. The title and enactment clause have become standard over time, in accordance with law and custom. The form and length of the body are determined by the individual requirements of the bill. Generally speaking, bills are organized in the following manner.

A. Caption.

The caption of a bill, also known as the “heading”, provides information such as the sponsors, Chamber of introduction, the specific General Assembly involved, e.g., the 147th General Assembly, and number assigned to the bill.

All bills must list the sponsor. A bill can have one or more sponsors. The originator of the bill is referred to as the “prime sponsor”. There can be only one prime sponsor. Sometimes, others may be listed along with the prime sponsor. These people are referred to as “co-prime sponsors”.¹⁰ In such cases, co-prime sponsors are connected to the prime sponsor, and each other, with an ampersand (&). Additional supporters of the bill are referred to as “co-sponsors”. Co-sponsors follow prime and co-prime sponsors in the list of sponsors and are grouped alphabetically by Chamber unless otherwise requested by the prime sponsor. Co-sponsors begin on a separate line from the prime/co-prime sponsors. Co-sponsors of the same Chamber are connected by a comma and separated from co-sponsors of the other Chamber by a semi-colon. Senate co-sponsors appear before House co-sponsors in Senate legislation while House co-sponsors appear before Senate co-sponsors in House legislation. DELIS automatically provides the new line and commas needed to separate co-sponsors.

Example of Co-Prime Sponsors Line:

Sponsor: Sen. Emerson & Sen. Thoreau & Sen. Longfellow
& Rep. Whitman & Rep. Dickinson

Example of Co-Sponsors Line (Shown Below Sponsor):

Sponsor: Sen. Emerson
Sens. Thoreau, Longfellow; Reps. Whitman, Dickinson

¹⁰ It is the practice to use the term “co-prime sponsor” to refer to those ampersanded in the sponsor line to legislation in both Chambers. However, House Rule 19(f) indicates that a Senator cannot be the co-prime sponsor of legislation in the House and is instead referred to as the “joint sponsor”.

The caption also includes the State Seal, which DELIS automatically attaches to the bill during the drafting process.

This discussion also pertains to, and these elements are required to be included in, a substitute bill, an amendment, and a resolution.

B. Bill Title.

The bill title, or long title, is a concise statement of its general purpose. The bill title is located at the beginning of the bill, before the preamble and the enactment clause.

The inclusion and content of a bill title is a constitutional requirement found in Article II, § 16 of the Delaware Constitution, which provides: “No bill or joint resolution, except bills appropriating money for public purposes, shall embrace more than one subject, which shall be expressed in its title.” This provision contains two separate requirements: (1) that a bill encompass a single subject and (2) that the subject be expressed in the bill’s title.

The Delaware Supreme Court recently addressed the single subject portion of Article II, § 16 in two cases, *Evans v. State*, 872 A.2d 539 (Del. 2005) and *Smith v. Guest*, 16 A.3d 920 (Del. 2011), with differing results.

In *Evans v. State*, the General Assembly passed a bill entitled “An Act to Amend Title 10 of the Delaware Code Relating to the Case of Ward T. Evans v. State of Delaware, 2004 WL 2743546 (Del. Supr.) and Generally the Interpretation and Construction of Delaware Laws by Delaware Judicial Officers.” The Court held that the bill “constitute[d] two distinct and separate subjects of legislation,” the first being the General Assembly declaring the Court’s 2004 decision in *Evans v. State* “null and void” and the second being the “establishment of prospective standards for judicial interpretation and application to Delaware laws.”¹¹

In contrast, in *Smith v. Guest*, the Court upheld the General Assembly’s passage of a bill entitled “An Act to Amend Title 13 of the Delaware Code Relating to Parents.” The Appellant, Smith, challenged the Family Court’s decision to grant the Appellee, Guest, joint custody of the Appellant’s child.¹² Smith argued in part that the grant of joint custody should be overturned because the legislation on which the grant was based was an unconstitutional violation of the single subject provision of Delaware’s Constitution.¹³ The Court compared the bill at issue in this case to bill at issue in *Evans* and found that it did not address multiple subjects as did the bill in *Evans*.¹⁴ The Court held that each Section of the bill, even those sections dealing with retroactivity and the judicial doctrines of collateral estoppel and *res judicata*, related to the single subject of the bill, *de facto* parenthood, and so did not violate Delaware’s Constitution.¹⁵

¹¹ *Evans*, 872 A.2d at 550.

¹² *Smith*, 16 A.3d at 923.

¹³ *Id.* at 928.

¹⁴ *Id.* at 929.

¹⁵ *Id.*

The requirement that the subject be expressed in the bill's title is, in essence a notice requirement, providing notice to both the legislators who vote on the law and the people who will be governed by it. In regard to legislators, these requirements prevent "log-rolling"¹⁶ legislation and surprise as to the content of legislation.¹⁷ In regards to the people, these requirements prevent "sleeper legislation," that is, legislation passed without fair notice to the people.¹⁸ As the Supreme Court noted in *Opinion of the Justices*, 177 A.2d 205, 208 (Del. 1962), "Article II, Section 16 does not require the title of a bill to be an index of its details, or a synopsis of the means by which the bill's object is to be accomplished. The requirements of the section are satisfied if the title of the bill is sufficiently informative so as to put on notice parties interested in the general subject matter in such manner as would lead them to inquire into it."

The drafter should take care when drafting the bill title as it is nearly impossible to amend the bill title, even as the title of a substitute bill. House rules strictly prohibit the use of an amendment¹⁹ or substitute²⁰ to alter a bill title, while Senate rules allow for a motion to be made to amend or substitute a bill title to correct typographical errors only.²¹ Therefore, the following considerations are important.

First, if a bill proposes to amend an existing Code provision, law, or constitutional provision, that fact should be indicated in the bill title by specific reference to the Code title, volume and chapter of the law in the Laws of Delaware, or article and section in the Constitution. If the bill amends more than one title of the Code, volume and chapter of the Laws of Delaware, or article and section of the Constitution, the bill title should contain a reference to each Code title, volume and chapter of the Laws of Delaware, or article and section of the Constitution being amended.

However, there may be circumstances in which it is appropriate to reference the Code, Laws of Delaware, or the Constitution generally instead.

Example of a General Reference to the Delaware Code:

AN ACT TO AMEND THE DELAWARE CODE RELATING TO CRIMINAL DEFENSE FOR INDIGENT INDIVIDUALS.

Example of a General Reference to the Delaware Constitution:

AN ACT PROPOSING AMENDMENTS TO THE DELAWARE CONSTITUTION RELATING TO CONTINUITY OF GOVERNMENT.

One circumstance in which a general reference to the legal source material makes sense is when a drafter needs to amend multiple titles in the Delaware Code to change the name of a state official or state agency. One reason a more general reference is preferred is to allow for the

¹⁶ *Black's Law Dictionary* 953 (7th ed. 1999) ("The legislative practice of including several propositions in one measure . . . so that the legislature . . . will pass all of them, even though these propositions might not have passed if they had been submitted separately.").

¹⁷ *State ex rel. Craven v. Shaw*, 126 A.2d 542 (Del. Super. 1956), *affirmed* 131 A.2d 158 (Del. 1957).

¹⁸ *Opinion of the Justices*, 194 A.2d 855, 856 (Del. 1963).

¹⁹ House Rule 23(d).

²⁰ House Rule 24(c).

²¹ Senate Rule 10(c).

addition, by an amendment, of other references to the state official or state agency in the Delaware Code that may not have been included in the initial bill. If a more specific title is used, for example, “AN ACT TO AMEND TITLES 1, 2, 6, 9, 29 OF THE DELAWARE CODE”, then when a reference is found in Title 14 an amendment to the name in that title would not be permitted as it would exceed the scope of the bill title. The result would be that separate legislation would need to be prepared to make the change in Title 14. As indicated below, however, there are reasons to be cautious in drafting a broad bill title.

Second, the scope of the bill title should also be considered as it can pose drafting and political concerns. A bill title can be either broad or narrow in scope.

Example of a Broad Bill Title:

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE
RELATING TO ALCOHOLIC LIQUORS.

Example of a Narrow Bill Title:

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE
RELATING TO LICENSEE RELATIONSHIPS WITH IN STATE AND
OUT OF STATE ENTITIES.

If a bill title is narrowly written, the possibility for amendments to the bill narrows. From a drafting perspective, this can cause problems as it could necessitate the introduction of a new bill to fulfill a legislator’s policy goal. However, from a political perspective, this could restrict unfriendly amendments. Conversely, a broad bill title allows for a broad range of amendments. From a drafting perspective, this allows for some freedom in fulfilling the legislator’s policy goal. However, from a political perspective, this could lead to amendments that go beyond the scope of the sponsor’s intent.

Finally, it is strongly suggested that the term “relating to” be used in the bill title rather than “creating” or “directing” or “establishing”. Like a broad bill title, use of “relating to” allows constitutional wiggle room if the body of the bill needs to be expanded to accomplish the sponsor's intent.

C. Preamble.

A preamble, often referred to as the “Whereas clauses”, consists of a series of sentences appearing in the bill immediately after the title and before the enactment clause. The preamble of a bill is easily identified by its succession of “WHEREAS” clauses.

Example of a Preamble:

WHEREAS, the hides and skins of endangered species bring large profits and thereby encourage the interstate transportation and sale of hides of wild animals killed in violation of state and national laws, and, in many cases, slaughtered in violation of the laws of foreign nations; and

WHEREAS

A well-drafted preamble explains the cause or situation giving rise to the bill, attempts to gather support for the bill, and sets the policy behind or tone for the proposed legislation that follows.

With the advent of the synopsis, an alternative was created that can often serve the same purpose as the preamble. Additionally, a declaration of purpose section within the body of the bill can be used to accomplish the same goals.

That said, there are good reasons for the continued use of a preamble.

- (1) Since facts or policy determinations may be included in a preamble, it can serve as a source of legislative history for a reviewing court in interpreting the meaning of the legislation or assessing its constitutionality.
- (2) The preamble serves a purpose when a new idea is legislated or in cases of local or private bills.
- (3) Resolutions count a preamble as an essential aspect to the draft.

A drafter should be aware that while the preamble is a part of the bill and will be published in the Laws of Delaware, it is not part of the law and will not become a part of the Code.

D. Enactment Clause.

The enactment clause is located between the title of the bill and the first section of the body of the bill. If the bill has a preamble, the preamble comes before the enactment clause. An enactment clause is always set off by itself so that there is space between the enactment clause and the parts of the bill that precede and follow it.

The enactment clause is the part of a bill that declares its enactment and identifies it as an act of legislation. If the type of legislation contained within the bill requires a super-majority vote due to Constitutional mandate, the specific vote requirement should be set forth in parentheses as part of the enactment clause. See Section 4, A of this part for a chart containing the super-majority vote requirements.

Example of a Simple Majority Enactment Clause:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Example of a Super-Majority Enactment Clause:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

It is important to note that the Delaware Constitution is silent on the requirement for and wording of an enactment clause. While Delaware is one of only four states without a constitutional basis for the enactment clause, the drafter should not view the enactment clause as unimportant or consider its exclusion as inconsequential. The enactment clause has been a part of Delaware legislation dating back to the first entry appearing in Volume 1 of the Laws of Delaware in 1700. The current form of the enactment clause made its first appearance in 1953 in Volume 49, Chapter 1 of the Laws of Delaware. The Delaware Supreme Court, in *Opinion of the Justices*, 232 A.2d 103, 105 (Del. 1967), found the inclusion of an enactment clause to be a “long standing custom”. This long standing custom has been recognized by the rules for the Senate and House, which both require an enactment clause be included in a bill.²²

There are no Delaware cases addressing the situation where an enactment clause has been omitted from a bill. However, in 1978 the Delaware Attorney General provided an opinion in which a deputy offered the opinion that the exclusion of an enactment clause did not render a piece of legislation a nullity.²³ The deputy noted that in those states like Delaware without a constitutional provision regarding enactment clauses, some courts had voided legislation without enactment clauses and others had vindicated them. The deputy did indicate that a “careful draftsman should heed the advice of the Bill Drafting Manual and include an enactment clause” along with a notation of a super-majority vote requirement where applicable. However, the Delaware Supreme Court in *Wilmington Sav. Fund Soc. v. Green*, 288 A.2d 273 (Del. 1972),

²² See Senate Rule 8(a) and House Rule 18(b). House Rule 18(b) indicates that super-majority vote requirements should be included in the enactment clause.

²³ Del. Op. Att’y. Gen. 78-017, 1978 WL 22484 (October 5, 1978).

created an exception to the Enrolled Bill Doctrine by finding that if clear and convincing evidence established that the General Assembly passed a bill with the requisite super-majority vote, the bill has constitutionally passed even if a super-majority parenthetical was not included in the enactment clause.

In keeping with the bill drafting manual cited by the Attorney General, this manual urges the drafter to comply with the rules of the Senate and the House by including an enactment clause and, when appropriate, a super-majority parenthetical. Inclusion of this language declares the authority under which the legislation is enacted and, in the case of a super-majority parenthetical, provides notice to the public and the General Assembly to assure the appropriate vote for constitutional passage occurs.

If an enactment clause must be amended to reflect the correct super-majority vote requirement, the following language should be used:

AMEND House Bill No. 123 by inserting in the enactment clause after “DELAWARE” and before the colon the following: “(Two-thirds of all members elected to each house thereof concurring therein)”.

E. Body of the Bill.

Although the body of a bill is one of its required parts, it is made up of a series of optional parts. Each optional part is usually designated as a “Section” and, when referencing bill Sections, the “s” should be capitalized. Bill Sections (Section 1, Section 2, Section 3, etc.) divide up a bill and should never be confused with Code sections (§ 1201, § 1202, § 1203, etc.), which divide up a chapter of the Code. The body of the bill must always contain at least one bill Section, which must be labeled as “Section 1”.

In dividing the body of a bill up into bill Sections, the drafter should use care in crafting clear, logical divisions. And, if amending the Code, the drafter should include only those portions of the Code that belong within the division created by the bill Section. For example, if the drafter’s intent is to create a new chapter of the Code, the bill should have one bill Section which should include only those new Code sections intended to be part of the new chapter. However, if the drafter’s intent is to amend multiple Code sections within an existing chapter, the drafter may create one bill Section and include all of the Code sections to be changed within an existing chapter, or the drafter may create one bill Section for each individual Code section to be changed within the existing chapter. The latter is preferred and a drafter choosing this method must take care not to allow additional Code sections to be added to a bill Section in the drafting process prior to introduction or by an amendment. When crafting the prefatory language for a bill Section, the drafter should cite to the Code section, rather than a subsection or paragraph, even if planning to amend just one subsection or paragraph.

The body of the bill carries constitutional implications with it as well. The single subject rule, discussed previously in subsection B, regarding Bill Titles, requires that the body of the bill be

germane to the subject of the legislation to which the bill title refers.²⁴ Thus, the scope of the body of a bill may not be beyond the scope of the title of the bill, which is why the phrase “relating to” is so useful in a bill title.

The various parts of the body of a bill are described in the subsections that follow. The parts are listed in the order in which they usually occur, but there is nothing mandatory about the order in which the various parts of the body of a bill are presented. Please keep in mind, however, that few bills utilize all of the parts.

The first four parts of the body of a bill (declaration of purpose, definitions, basic provisions, and penalties) may be drafted in a single Section of the bill, especially if a drafter is creating a new chapter or subchapter, even though they may constitute a dozen or more sections (§§) of the Code. Likewise, when dealing with smaller changes, a bill Section may amend only a small part of a Code section (§) and another bill Section may amend another part of that same Code section (§). The remaining parts of the body of a bill (effective date, applicability clause, sunset clause, savings clause, grandfather clause, interpretation clause, severability clause, repealing clause, appropriations, and short title) are almost always included in separate Sections of the bill as these Sections are usually not needed to be included in the Code.

Finally, additions or deletions contained within the body of the bill must be in conformity with 1 *Del. C.* § 109(c) regarding the strike through and underline process for deletions from or insertions into the Code. This process is discussed in Part IV.

F. Declaration of Purpose.

A declaration of purpose, also known as a statement of policy or objectives, is most often found in a large, comprehensive bill which sets up a new chapter or subchapter. It is rarely used in a bill which amends an already established chapter or subchapter. It typically states the general objectives of the act to provide guidance to the regulatory bodies that enforce the act and the courts that interpret the act and give meaning to ambiguous portions.

A declaration of purpose is very important for certain types of bills, such as professional and occupational regulation bills, because legislative committees, such as the Joint Sunset Committee, refer to it to ensure that the agency the bill regulates is fulfilling its purpose.²⁵ A declaration of purpose is akin to the preamble in its purpose, however, it does not include any “whereas” clauses.

Example of a Declaration of Purpose:

§ 101. Objectives.

This chapter shall be administered to allow medical services to be delivered promptly and expertly by physician assistants to patients.

²⁴ See *Wilmington Trust Co. v. Highfield*, 153 A. 864, 869 (Del. 1931); *Kennedy v. Truss*, 13 A.2d 431, 435 (Del. Super. 1940).

²⁵ See 29 *Del. C.* § 10201, which defines the Joint Sunset Committee’s task in evaluating agencies.

G. Definitions.

Definitions are an important tool in the drafter's arsenal as they can be used for any of the following purposes:

- (1) To define a general term in order to avoid explaining it throughout the bill.
- (2) To avoid frequent repetition throughout the bill of the full title of an officer or agency.
- (3) To give an exact meaning to a word that has several dictionary meanings.
- (4) To define a technical word that is not commonly used or understood.
- (5) To limit the meaning of a term that, if not defined, might be defined by a court in a manner different from the intent of the General Assembly.

Through these uses, definitions can aid the drafter's quest for clarity.

Definitions should be placed where they can be most easily found and where they will be most helpful to the reader. Where the definitions will be used throughout the bill or eventual statute, they should be grouped together in a definition section. Where the definition will be used in only one Code section, the drafter should consider defining the term in that Code section.

When creating or amending a definition section, a drafter should remember that it is arranged in alphabetical order and designated by a number when preceded by introductory language²⁶ or by a letter when not preceded by introductory language. A term added to an existing definition section should be added in its appropriate alphabetical location.

Example of a Definition Section Preceded by Introductory Language:

§ 222. General definitions.

When used in this Criminal Code:

(1) "Building," in addition to its ordinary meaning, includes any structure, vehicle or watercraft. Where a building consists of 2 or more units separately secured or occupied, each unit shall be deemed a separate building.

(2) "Controlled substance" or "counterfeit substance" shall have the same meaning as used in Chapter 47 of Title 16.

(3) "Conviction" means a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a plea of nolo contendere accepted by the court.

Defined terms are capitalized to satisfy grammatical requirements imposed on words coming at the beginning of sentences, not because they are to be capitalized in other portions of the legislation. Therefore, just because the word is capitalized in the definition section does not mean

²⁶ When used in relation to the Delaware Code, "introductory language" refers to language in the Code that precedes a list. For example, in "Example of a Definition Section Preceded by Introductory Language", the introductory language is "When used in this Criminal Code:".

it must be capitalized in other portions of the legislation. A drafter must follow the standard capitalization rules when the defined term appears in another portion of the legislation.

When drafting language that refers back to a term in a definition section, the reference must be to the definition section as a whole rather than to the specific term. Since definition sections in the Code are arranged alphabetically, a term's designation is subject to change with the addition or deletion of another term. A reference to the definition section as a whole reduces the possibility that the drafter will neglect to amend a specific reference to the term's designation creating erroneous references. The examples highlight the differences in approaches.

Example of a Correct Reference to a Definition Section:

§ 1448B. Criminal history record checks for sales of firearms --
Unlicensed persons.

(a) No unlicensed person shall sell or transfer **any firearm, as defined in § 222 of this title**, to any other unlicensed person without having conducted a criminal history background check through a licensed firearms dealer in accordance with § 1448A of this title and § 904A of Title 24, as the same may be amended from time to time, to determine whether the sale or transfer would be in violation of federal or state law.

Example of an Incorrect Reference to a Definition Section:

§ 1457. Possession of a weapon in a Safe School and Recreation Zone;
class D, E, or F felony; class A or B misdemeanor.

(i) For purposes of this section only, **“deadly weapon” shall include any object described in § 222(5) or (12) of this title** or BB guns.

Experienced drafters have learned to double-check the definition section after the bill has been completed. Meanings and uses for defined words often change during the drafting of a bill, especially if the drafting is done by a committee. Sometimes, a defined word is removed from the substantive portion of the legislation, but has not been removed from the definition section.

Additional considerations for drafting definitions or definition sections are included in the discussion on Definitions found in Part VI, Chapter 2, Drafting Rule 25 and 26.

H. Basic Provisions.

The basic provisions of a bill provide the substantive provisions of the body of the bill. In many bills, this part is the largest portion of the bill as it sets forth the rights, powers, duties, immunities, and jurisdiction of those persons or entities that are the subject matter of the bill. It is also the most difficult portion to draft, as it is the portion of the bill that requires the drafter to make a decision between specific requirements or general prohibitions to facilitate the client's policy. These are choices unique to each situation and thus the drafter would not be aided by the general discussion this manual could provide.

I. Penalties.

Penalty provisions are often included in a bill to promote compliance with and assist in enforcement of the client's desired policy. The Code contains three general types of penalties: criminal, civil, and administrative. Criminal and civil penalties are imposed by courts, while administrative penalties are imposed by administrative agencies.

Example of a Criminal Penalty:

A person who violates a provision of this section [or chapter or title] is subject to a fine of not less than \$1,000 nor more than \$5,000, or to a period of imprisonment of up to 1 year, or both.

Example of a Civil Penalty:

If any person is found to have violated any provision of this chapter, and said violation is committed against an elder person or a person with a disability, in addition to any criminal or civil penalty otherwise set forth or imposed, the court may impose an additional civil penalty not to exceed \$10,000 for each violation.

Example of an Administrative Penalty:

If a person fails to comply with the provisions of § 305 of this title, the person's driver's license must be suspended for a period of 90 days; if a person fails to comply with the provisions of § 306 of this title, the person's driver's license must be forfeited for a period of 1 year, after which time application may be made to the Division for a new license.

Civil and administrative penalties can usually be found in the same section which sets up the regulatory provision for which the penalties are imposed. Criminal penalties, however, are treated differently in different parts of the Code.

If a large portion of the Code, such as an entire title, regulates an activity or severely restricts an activity, one or more chapters within the title are often reserved for the imposition of penalties. Title 4 is such a regulatory title. If a chapter makes an activity illegal, severely restricts an activity, or differentiates between types and grades of illegality, separate sections containing penalties are usually reserved for each type of illegality (*see* Chapter 47 of Title 16, The Uniform Controlled Substances Act). In cases where the prohibition of an activity or the legality of an activity is not the central purpose of the title or chapter, yet certain acts are made illegal, the penalty is most often attached directly to the section involved.

A drafter should keep in mind that when crimes are created by legislation, any offense not specifically designated by statute to be a felony, a class A or class B misdemeanor, or a violation is an unclassified misdemeanor or an environmental misdemeanor or violation.²⁷ Any felony not

²⁷ *See* 11 Del. C. § 4202(b).

specified in a class or given its own specific penalty is a class G felony.²⁸ An offense is not a violation unless expressly declared to be one.²⁹

Review legislation to ensure that when a prohibition has been created a penalty or other sanction for a violation of the prohibition has been provided. Otherwise, there may be no recourse for a violation.

J. Effective Date and a Contingent Effective Date.

Effective Date. The time when a bill becomes law and the time when it goes into effect and begins to operate are not necessarily the same. The latter is known as the “effective date”.

A bill becomes law when signed by the Governor; when not signed by the Governor within 10 days of presentment, Sundays excepted; or when passed over the Governor’s veto by a three-fifths majority in both Chambers.³⁰ The bill is effective immediately upon the occurrence of one of these three aforementioned events unless otherwise specified.³¹ Therefore, it is necessary for a drafter to consider if there are reasons to delay the effect of the bill. If so, the drafter should draft a provision specifying that the bill, even if enacted into law, does not become effective until a certain date, or until the happening of a certain event. **This is the purpose of an effective date Section, which should be included as a separate Section of a bill as it should not be included in a provision of the Code. Do not include the effective date in the Delaware Code, this is a waste of a Code section number and ultimately a waste of space in the Delaware Code.**

There are at least three types of effective date provisions: a delayed effective date provision, a retroactive effective date provision, and a contingent effective date provision. A delayed effective date provision postpones the effect of the law until a future date.³² A retroactive effective date makes a law effective on a past date.³³ Contingent effective dates, which make an enacted law effective based on the occurrence of a specified event, are discussed in detail later in this section. All types require close attention to prevent practical and legal problems.

Delayed effective dates are also useful because they allow the General Assembly to pass the law now, but for the law to take effect on a future date. Spend a few minutes to focus on what the legislation does and whether it is a good idea to delay the law’s effective date.

For example, it may be desirable that the effect of the legislation is delayed to provide sufficient time for notice to the public or for an agency to enact regulations. If such an effective date is required, use the month and day on which the legislation is desired to take effect or a specific

²⁸ See 11 Del. C. § 4201(b).

²⁹ See *id.* § 4203.

³⁰ Del. Const. art. III, § 18.

³¹ *Conway v. Wolf Liquor Co.*, 200 A.2d 831, 834 (Del. 1964) (“Where there exists no controlling constitutional or general statutory provision, as is true in Delaware, the authorities support the proposition that an Act takes effect immediately upon its approval by the Governor unless the Legislature has manifested a contrary intention in the Act itself.”).

³² See Lawrence Filson & Sandra Strokoff, *The Legislative Drafter’s Desk Reference*, 341 (2nd ed. 2008).

³³ *Id.* at 342.

amount of time (60 days, 6 months, 1 year) followed by the phrase: “following its enactment into law”. Thus, ordinarily, follow one of the following effective date formats:

Examples of Effective Date Sections:

This Act takes effect on July 1 following its enactment into law.

This Act takes effect 30 days after its enactment into law.

However, it might be advantageous that a bill take effect on a specific date, in order to coincide with other future events, including the beginning of a calendar year, school year, fiscal year, or licensing year. Avoid, if possible, selecting a specific future date, e.g., August 1, 2017, because it will need to be amended if passage of the legislation is delayed and, more importantly, because use of a specific enactment date could inadvertently result in the creation of a retroactive effective date. If the law is enacted after the specific date provided by the effective date, the law will apply retroactively; in cases of a criminal law, this would create an unconstitutional *ex post facto* law. In other cases it may mean, for example, that a benefit is conferred or restricted before intended, resulting in the expenditure of State funds before intended or the requirement that the benefit already paid be repaid.

If the specific date on which the legislation will become effective is important, try to draft the effective date provision using the specific date and accommodating for all possible enactment dates. For example, if the legislation were introduced during the 2015 legislative session with the desire that it become effective on August 1, 2016, use the specific date of August 1 and accommodate all possible enactment scenarios by using the following language:

Example of Drafting for a Specific Effective Date:

If this Act is enacted before or on August 1, 2015, this Act takes effect on August 1 of the first full year following its enactment into law. If this Act is enacted after August 1, 2015, this Act takes effect on August 1 following its enactment into law.

Do not use the phrase “effective upon the signature of the Governor”. As discussed above, not only is it unnecessary because all bills signed by the Governor become law immediately unless otherwise specified, but a bill can also become law without the Governor’s signature. Additionally, “effective upon enactment into law” is unnecessary because all bills signed by the Governor become effective immediately. While informative, this phrase is legally surplusage and can lead to confusion.

A drafter may use a delayed effective date to designate different parts of a bill that should become effective at different times. This is usually done within the effective date Section through reference to the specific bill Section numbers. Also, instructions may be included, especially with changes in the criminal law, as to which version of the law governs and when, within *ex post facto* restraints, of course.

Examples of Limited Effective Date Sections:

Section 12 of this Act takes effect on July 1 following the Act's enactment into law.

Sections 2603(32) and 2604 of Section 1 of this Act take effect 30 days after the Act's enactment into law.

When a drafter constructs a limited effective date section, the drafter may want to make it clear that all other Code provisions or bill Sections become effective upon the act's enactment into law. If the drafter does this by specifically calling out the bill Sections that become effective upon the act's enactment into law, the drafter should include the effective date provision itself as well to make it clear the effective date provision takes effect upon enactment as well.

Contingent Effective Date. A contingent effective date, also known as a contingency, is a drafting mechanism used to provide that a bill, or bill Section, takes effect upon the happening of a specified future event. The future event can be the appropriation of funding, the promulgation of regulations, the selection of a third-party vendor to implement a program that has been created by the bill, or some event occurring outside the State (the enactment of a federal law or the enactment of uniform legislation by a specific number of states) or the United States (the depositing of a treaty with the Hague). A contingent effective date can be included in the substantive provisions intended for inclusion in the Code or in a separate bill Section.

Examples of Contingent Effective Dates:

This Act takes effect upon promulgation of regulations adopted under this chapter, or 6 months after enactment, whichever occurs first.

This Act takes effect subject to the establishment of a contract for services between the State of Delaware and a third-party vendor to administer the provisions of this Act.

If possible, avoid creating a contingent effective date because it may cause difficulties for:

- (1) Those who must comply with the law, as they may not be able to determine what the law currently is or when the law will change.
- (2) The Code Revisors, who must spend time trying to determine whether and when a provision is effective.
- (3) Drafters, who may need to amend a provision with an existing contingent effective date and may not be able to determine what the law is and so may have to draft around the contingent effective date increasing the complexity of the law.

Additionally, carefully consider the implications of creating a contingent effective date that grants to a state agency the authority to determine the fulfillment of the contingency. Doing so

takes control away from the General Assembly and enables the state agency to determine when the law takes effect, if ever, and may create an unconstitutional delegation of legislative powers.

If a contingent effective date is required, do the following:

- (1) Draft a clear contingent effective date that is contingent on knowable events that are easily verified and that vest a specific person or entity, preferably within the state government, with determining the fulfillment of the contingency.

Do Not Draft This: This Act takes effect upon enactment of comparable federal law.

- (2) Include, as part of the contingent effective date, language requiring a specific person, state agency, or other appropriate person or entity to notify the Registrar of Regulations when the contingency is met and requiring the Registrar of Regulations to publish notice in the Register of Regulations. When drafting such language, the drafter should include language that the notice must be published in the Register of Regulations before the legislation can become effective.

Examples:

This Act takes effect not less than 10 days following the publication of final regulations in the Register of Regulations.

This Act takes effect [insert # of days not less than 10] following the date of publication in the Register of Regulations of a notice that both of the following have occurred:

- (1) The State of Delaware and a third-party vendor have entered into a contract to administer the provisions of this Act.
- (2) The Department has provided notice to the Registrar of Regulations that contingency in (1) has been fulfilled.

- (3) Draft a contingent effective date that is certain to occur in a short time frame after the legislation is enacted or ensure that the law is not uncertain indefinitely by doing one of the following:
 - a. Providing that the legislation becomes effective on a specified date after the notice is published in the Register of Regulations or on some other date certain, whichever occurs first.

Example: This Act takes effect after the publication of the notice required by this Section or January 7, 2017, whichever is earlier.

- b. Including language stating that the provisions assigned a contingent effective date are void unless a notice is published in the Register of Regulations by a date certain.

Example: This Act is void unless the Department notifies the Registrar of Regulations of the fulfillment of the contingency in this Section and a notice is published in the monthly Register of Regulations by January 1, 2016.

K. Applicability Clause.

Related to an effective date is an applicability clause.

Example: This Act is applicable to all policies issued on or after November 30 after its enactment into law.

In this example, the legislation is effective immediately upon enactment; however, it applies only to policies issued on or after November 30 after its enactment into law.

Sometimes a drafter may want to combine an effective date and an applicability clause.

Example: This Act takes effect on July 1 following its enactment into law and is applicable to all policies issued on or after November 30 following its taking effect.

L. Sunset Clause

A “sunset clause” provision is an expiration provision which is used to provide a time or circumstance upon which the power or effectiveness of an act, a provision of an act, or a specific agency expires. As such, a sunset clause can be a useful political device to temporarily raise revenues or enact a program allowing for review by a later General Assembly to determine if the revenues or program are still needed.

Example of a Sunset Clause:
This Act expires 3 years after its enactment into law, unless otherwise provided by a subsequent act of the General Assembly.

A variation on a sunset clause is a provision which speaks only to a certain point in time, or which is applicable only for a certain window in time that may occur in the future. In essence such a variant creates a hidden sunset clause, as once the time period passes, the rest of the provision is no longer operative.

Examples of Hidden Sunset Clauses:

A person who purchases a dog or cat between January 1, 2006 and April 1, 2008 shall pay \$15 for a license for the dog or cat.

The Department shall collect annual fees, payable annually or in quarterly installments, during calendar years 2012, 2013, and 2014 from each source that is required to register with the Department as set forth in subsection (a) of this section.

If a client chooses to employ such a mechanism, the drafter should make the client aware that the language, and any associated with it, will not be operative beyond the established time period and will require a new bill to amend or remove the hidden sunset date. If possible, a drafter should avoid drafting a hidden sunset date as it can last in the Code for decades after the class of people or the time period to which it refers have come and gone.

If the time period or limitation involves only a few people or if the time period itself will be limited in nature, the bill drafter should not include it within that portion of the bill intended for inclusion within the Code. It would be better, under such circumstances, to place it in a separate bill Section at the end of the bill.

Just as there are contingent effective dates, there may be contingent sunset dates as well. To create a contingent sunset date, review this section as well as the Contingent Effective Date provisions of Section J of this chapter.

Example of a Contingent Sunset Date.

If the Government of New Castle County conducts a general reassessment of all real estate within New Castle County, the deletion of the existing version of § 2601(a)(3) of Title 14 and the insertion of the new version of § 2601(a)(3) of Title 14 by this Act expires upon the Secretary of the Board of Education of the New Castle County Vocational Technical School District notifying the Registrar of Regulations of the reassessment for computing New Castle County property taxes operative retroactive to the date of reassessment. The Registrar of Regulations shall publish notice of the date of fulfillment of this contingency in the monthly Register of Regulations.

A sunset clause or a contingent sunset clause should appear in a separate Section at the end of the bill. **Do not include a separate sunset clause or contingent sunset clause in the Delaware Code, this is a waste of a Code section number and ultimately a waste of space in the Delaware Code.**

When drafting a bill to extend or remove a sunset date provision, be mindful of the sunset date. Introduce the legislation well in advance of the sunset date. Bills have sunsetted waiting for the Governor to sign amendments to the sunset date.

If a sunset date in legislation passed by a supermajority vote needs to be extended or removed, then the legislation doing so must be passed by the same supermajority vote.

M. Savings Clause.

A savings clause is used when the client wishes to exempt existing rights, obligations, or procedures from the new law's provisions, thereby limiting the application of the bill when it becomes law. A savings clause is remedial in nature. Remedial laws are those that provide a means to enforce rights or redress injury, or correct or modify an existing law when the existing remedy is inadequate.³⁴ Because they are remedial in nature, savings clauses are afforded liberal interpretation by Delaware courts.³⁵

A savings clause may be drafted either as a part of the Code if the clause is intended to be permanent or as a separate Section of the bill if the clause is intended to be temporary.

Examples of a Savings Clause:

This Act does not affect any cause of action or the remedy provided for it if the cause of action accrued and a lawsuit on the action was instituted prior to the effective date of this repeal.

If a lawsuit is instituted on a cause of action accrued before the effective date of this Act and within one year of the effective date, this Act does not affect that cause of action.

N. Grandfather Clause.

A grandfather clause is a form of a savings clause that makes a statutory change inapplicable to persons whose rights were established, or to situations that occurred, before the date of change. A grandfather clause is often drafted as a nonstatutory Section of the Laws of Delaware because of the short period for which it applies.

O. Interpretation Clause.

Courts usually interpret laws strictly, limiting their operation to exactly what a statute says. One exception to that in Delaware is that a statute which is remedial in nature is given a liberal construction.

³⁴ *Black's Law Dictionary* 1296 (7th ed. 1999) (defining "remedial law").

³⁵ *See Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1256 (Del. 2011) ("Under Delaware law, remedial statutes should be liberally construed to effectuate their purpose.").

There are times when a drafter realizes that the wording of an important provision may be open to interpretation by a court, and that the interpretation may change the meaning or outcome sought by the client. At such times, should consider whether to include either a “liberal” or “strict” interpretation clause.

In other instances, a bill is written in broad, general terms because the client has no way of determining possible future events which may affect the legislation. In such case, the client may wish to add an interpretation clause which makes clear that the legislative intent is that the Act be construed either strictly or liberally.

An interpretation clause may be included either in the substantive portion of the bill to be codified³⁶ or within a separate Section to be included in the Laws of Delaware.³⁷

Example of an Interpretation Clause to be Codified:

§ 929. Construction of chapter.

This chapter and the regulations promulgated thereunder shall be construed liberally to effectuate the legislative intent and as complete authority for the performance of each and every act and thing herein authorized.

Example of an Interpretation Clause Included in Laws of Delaware:

Section 9. Rules of Construction.

(a) The rule of construction that statutes in derogation of the common law are to be strictly construed shall have no application to the provisions of this Act. This Act, and the statutes enacted hereby, shall be broadly construed to accomplish their intended purposes.

(b) The rule of construction that specific statutory provisions should prevail over general statutory provisions shall have no application to this Act except to the extent that the provisions of this Act are considered specific as opposed to general provisions.

Be aware of the Delaware Supreme Court’s decision in *Evans v. State*, 872 A.2d 539 (Del. 2005) as it relates to interpretation clauses. The Court reviewed the interpretation clauses currently in Chapter 54 of Title 10 in which “the General Assembly asserts its ‘right and prerogative to be the ultimate arbiter of the intent, meaning, and construction of its laws and to vigorously defend them.’”³⁸ The Court ruled that these clauses were an attempt by the General Assembly “to confer upon [itself] fundamental judicial powers” and, as such, violated the provisions found in Article IV of the Delaware Constitution regarding the judicial powers, thereby violating the separation of powers doctrine described in *Marbury v. Madison*.³⁹ The Court made clear there is a line it is not willing to allow the General Assembly to cross when it comes to interpretation clauses.

³⁶ See 3 Del. C. § 929 and the “Example of an Interpretation Clause to be Codified”.

³⁷ See 79 Del. Laws, ch. 19 (2013) and the “Example of an Interpretation Clause Included in the Laws of Delaware”.

³⁸ *Evans* at 550.

³⁹ *Id.* (citing *Marbury v. Madison*, 5 U.S. 137 (1803)).

P. Severability Clause.

Occasionally, part of an act is declared unconstitutional or a court rules that the act is unconstitutional if applied in a certain manner, though it may be constitutional if otherwise applied. In those cases, the Court must determine whether the alleged defect invalidates the entire act or if the provisions are severable.

A severability, or separability, clause is a statement of legislative intent that the separate Sections or applications of an act must be regarded separately if one or more Sections of the act are declared invalid. A well-drafted severability clause expresses the precise effect which the invalidity of a part or an application of the act has upon the remaining parts or other applications of the act. Sometimes it may be necessary to use a “partial severability” clause.

Generally, a severability clause is enforceable by a court.⁴⁰ One instance in which such a provision is not enforceable is when the bill is found to have violated the single subject rule in Article II, § 16 of the Delaware Constitution.⁴¹ Also, the provisions must in fact be capable of separation.⁴²

The opposite of a severability clause is a non-severability clause, which is rarely used. It provides that if one section or application is declared invalid, the whole act fails.

Examples of a Severability Clause:

If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the provisions of this Act are severable if the invalidity does not affect the other provisions of this Act that can be given effect without the invalid provision or the application of this Act that can be given effect without the invalid application.

Example of a Non-Severability Clause:

If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the other provisions of this Act are non-severable and the remainder of the Act is also invalid.

⁴⁰ See *Evans*, 872 at 552.

⁴¹ See *id.* at 552-53.

⁴² See *Reese v. Hartnett*, 73 A.2d 782, 784 (Del. Super. 1950) (“To determine separability, two questions must be answered affirmatively: (1) is the unobjectionable object, standing alone, capable of enforcement; (2) did the Legislature intend it to stand alone in case the other should fall.”).

The Code contains a general severability clause, which is found in § 308 of Title 1 and states:

If any provision of this Code or amendments hereto, or the application thereof to any person, thing or circumstances is held invalid, such invalidity shall not affect the provisions or application of this Code or such amendments that can be given effect without the invalid provisions or application, and to this end the provisions of this Code and such amendments are declared to be severable.

Section 308 has been used by Delaware courts to sever portions of a law in the absence of a severability clause.⁴³ Delaware courts have held that the absence of a severability clause is not fatal as “where the legislative intent is not clear from the statute itself, the Delaware courts derive the necessary intent from § 308.”⁴⁴ The better drafting practice is to include a specific severability clause within a bill when it is deemed necessary as this is a clearer expression of legislative intent than simply relying on § 308.

Q. Repealing Clause.

There are two classes of repealing clauses: express, usually statutory, and implied, usually court-imposed. Express repealers are typically created through a legislative enactment containing an express provision repealing a particular act or portion of an act. Express repealers generally leave no uncertainty as to what is to be repealed. Implied repealers are usually court imposed due to a conflict between existing law and subsequent enactments. The courts are often called upon to determine whether and to what extent a repeal by implication has occurred.

There are three types of express repealers: general, partial, and multiple. A general repealer consists of a statement that the section or bill being enacted repeals all prior laws which are inconsistent with the new act. A partial repealer, which is very common in Delaware bill drafting, repeals only a portion of an existing section, subsection, or chapter. A multiple repealer usually appears in one of the last Sections of the bill, and contains a list of specific repeals.

Example of a General Repealer [Not Recommended for Use]:

Any previous Act inconsistent with the provisions of this Act is hereby repealed to the extent of such inconsistency.

Example of a Partial Repealer:

Sections (§§) 5101 through 5110 of Title 25 of the Delaware Code are hereby repealed.

⁴³ See *Stiftel v. Malarkey*, 384 A.2d 9, 17 (Del. 1977).

⁴⁴ *C.M.G. v. L.M.S.*, 2009 Del. Fam. Ct. LEXIS 73 at *29 (Del. Fam.) (citing *Rappa v. New Castle County*, 18 F.3d 1043, 1072 (3rd Cir. 1994).

Because they create uncertainty, general repealers and implied repealers are not popular with the courts. From time to time, general repealers have even been held to be insufficient to effectuate a repeal. In most instances, a general repealer is considered by courts to be a nullity,⁴⁵ although it might still have some highly specialized uses, such as when the drafter wants to prevent the court from using *expressio unis exclusio alterius* (“to state one is to deny the others”) or to prevent a reversion back to the common law.

Implied repeals are legal, but there is a very strong presumption against the repeal of a statute by implication.⁴⁶ Courts will approve of and impose implied repealers under one or more of the following circumstances:

- (1) When there is an irreconcilable inconsistency between a new enactment and a pre-existing statute.
- (2) When two provisions are irreconcilably inconsistent.
- (3) When a word, sentence, or phrase without a repealer would lead to an absurd conclusion.⁴⁷

A drafter may limit the extent of a repealer so that it does not affect certain portions of the law which it might otherwise repeal.

Example of a Limiting Repealer:

This Act may not be construed as repealing any of the laws of this State relating to pollution of the State’s waters or to any conservation laws, but must be held and construed as ancillary and supplemental to Delaware laws.

R. Appropriations.

It is the sole province of the General Assembly to appropriate State funds.⁴⁸ An appropriation is the General Assembly’s authorization for a person or organization, often a State agency, to receive a specified amount of money from the General Fund. The vast majority of appropriations are made by specific acts, which include the Annual Appropriation Act (Budget Bill), the Capital Improvements Act (Bond Bill), and the Grants-in-Aid Bill, drafted solely for the purpose of appropriating funds. All appropriations are made by act, except the internal operating expenses of the General Assembly, which may be authorized by resolution.⁴⁹

In addition to pure appropriation acts, some bills are introduced in each General Assembly in which the appropriation is not its main purpose. The Code provides that these supplementary appropriation bills must designate the source from which the money appropriated is to be

⁴⁵ See *Artesian Water Co. v. State Dept. of Highways & Transp.*, 330 A.2d 432, 439 (Del. Super. 1974).

⁴⁶ See *Olson v. Halvorsen*, 986A.2d 1150, 1160 (Del. 2009).

⁴⁷ See *Bd. of Assessment Review of New Castle County v. Silverbrook Cemetery Co.*, 378 A.2d 619, 621-22 (Del. 1977).

⁴⁸ See Del. Const. art. VIII, § 6 (“No money shall be drawn from the treasury but pursuant to an appropriation made by Act of the General Assembly.”).

⁴⁹ See *id.*

derived.⁵⁰ Additionally, when an appropriation is included in a bill, the bill is treated in the same manner as an appropriations bill for vote requirement purposes. For example, appropriations made to counties, municipalities, or corporations require the concurrence of three-fourths of all the members elected to each Chamber.⁵¹

The following example shows typical language for a supplementary appropriation.

Examples of a Supplementary Appropriation Clause:

This Act is a supplementary appropriation and the money so appropriated shall be paid by the State Treasurer out of funds in the General Fund of the State of Delaware not otherwise appropriated.

The sum of \$100,000 is hereby appropriated from the General Fund for the purpose of paying salaries, administrative expenses, and other costs necessary to carry out the provisions of this Act.

An example of a supplemental appropriation is provided in Appendix A-14.

S. Short Title.

A short title may be used if a bill is lengthy and constitutes a comprehensive enactment of a given subject, especially if the title is unduly verbose or confusing. A short title is sometimes used to dedicate a bill to a victim or to a person who has been instrumental in bringing attention to the topic addressed by the bill. As the name implies, brevity and simplicity are the hallmarks of a well drafted short title.

When part of a comprehensive enactment, the short title typically appears in its own section at the beginning of the comprehensive enactment prior to the declaration of purpose and definition sections and, therefore, it will appear as a codified provision in the Code.⁵² When used as a dedication, the short title typically appears as a separate Section of the body of the bill and, therefore, it typically only appears in the Code in the “Revisor’s note” section.⁵³

Example of a Short Title in a Comprehensive Enactment:

§ 401. Short Title.

This chapter shall be known and may be cited as “The Delaware Aquaculture Act.”

Example of a Short Title Used as a Dedication:

Section 3. This Act shall be known as the Warren G.H. Pritchett Act.

⁵⁰ See 29 Del. C. § 6339.

⁵¹ See Del. Const. art. VIII, § 4.

⁵² See Del. H.B. 160, 147th Gen. Assem. (2013) and the “Example of a Short Title in a Comprehensive Enactment”.

⁵³ See 74 Del. Laws, ch. 99 (2003) and the “Example of a Short Title Used as a Dedication”.

T. Synopsis.

A synopsis is a clear and accurate statement that may include the intent of the bill, a brief history of why the bill was introduced, changes to existing statutes or a description of a proposed new law, or how the bill affects current law with its existing rights, liabilities, and proceedings. Because of this level of detail, Delaware courts have held that the synopsis of a bill is a proper source from which to discern legislative intent.⁵⁴ Additionally, legislators and the public often look to the synopsis as a source of information about legislation's purpose and impact. Therefore, a drafter should use terms that are objective, nonpartisan, and not judgmental. While an itemization of every provision is not required, a synopsis should be drafted so that a reader can learn from the synopsis the effect of the legislation. The synopsis should note when the legislation is a reaction to or codification of a court decision, and include a citation to the case so the reader can locate it. When the legislation is a substitute bill, the synopsis should detail the differences between the substitute and the original bill.⁵⁵

Both Chambers recognize the importance of the synopsis, by requiring one be included on certain types of legislation. The Rules of the Senate require all bills, joint resolutions, and amendments to contain a synopsis.⁵⁶ The Rules of the House require a synopsis be attached at the end of each bill, joint resolution, and substantive amendment.⁵⁷ A synopsis is customarily included on technical amendments in the House and simple and concurrent resolutions in both Chambers.

Despite the importance of the synopsis to legislators, courts, and the public, it is not included in the bill when it is published in the Laws of Delaware. At that point, the only source for finding the synopsis is the General Assembly's website, which contains original legislation since the 140th General Assembly, or the Legislative Library, which contains legislation since the 127th General Assembly.

When drafting a synopsis, do not include any enhanced formatting such as outline numbering or lettering or any form of bullet points. These features can wreak havoc with DELIS, cause printing issues, or not display properly on the General Assembly's website. Additionally, do not draft an amendment that purports to amend the synopsis. A synopsis is unique to the legislation to which it is attached. Once attached, it is permanently connected to that piece of legislation. An amendment may alter the legislation and, in so doing, change the meaning of that legislation; however, the amendment's synopsis is the vehicle through which to indicate the changes that have occurred to the original legislation. Thus, take care in drafting a synopsis to ensure it accurately describes the legislation as that legislation appears at the time of introduction.

⁵⁴ See *New Castle County Council v. State*, 688 A.2d 888 (Del. 1997).

⁵⁵ See Part III, Chapter 3: Substitute Bills.

⁵⁶ See Senate Rule 8(a).

⁵⁷ See House Rule 18(b) and 23(b).

Example of a Synopsis:

This Act would facilitate the growth of Delaware licensed farm wineries, brewery-pubs, microbreweries, and craft distilleries by allowing them to expand their businesses within and outside of the State, provided they continue to meet the production limitations set forth in the statutes. It would also permit brewery-pubs to distill products which are not malt-based.

As noted in the example, refer to “This Act” rather than to “This bill” when drafting a synopsis to a bill.

U. Author.

Senate bills, joint resolutions, and amendments must include the name of the author responsible for writing the legislation.⁵⁸ Senate simple and concurrent resolutions may include the name of the author and, with the exception of the organizational resolutions, typically do.

In the past, the department has been named as the author, a practice which is supported by the Senate Rule on the topic. However, this practice has fallen into disuse and now the author is almost exclusively the prime sponsor of the legislation. Legislation originating in the House does not require the name of the author of the legislation.

V. Footer.

Each piece of legislation has a group of letters and numbers in the bottom left corner. This is the “footer”. The letters identify, through the use of initials, the caucus or Legislative Hall agency through which the legislation was introduced, the bill drafter or the sponsor, and the person who typed most or all of the legislation. DELIS automatically adds this information when a draft is created.

From time to time a bill drafter, in complying with a request for a specific type of legislation, copies a bill or resolution drafted by someone else in a previous General Assembly. There is nothing wrong in redrafting a piece of legislation from a previous General Assembly word-for-word, but each bill drafter has an individual responsibility to closely examine such previous legislation for possible typographical errors, legal and grammatical flaws, and, particularly, for changes in the Code in the interim and for an expired effective date. After such examination, the drafter should change the footer by inserting his or her own initials in place of those of the former drafter.

⁵⁸ See Senate Rule 8(a).

Section 3: Special Types of Bills.

In conjunction with the power to make the laws for the State, the General Assembly is constitutionally granted the authority to amend the Constitution and certain charters. A discussion of that authority and its implication on drafting Delaware legislation follows.

A. Constitutional Amendments.

The power to amend the Delaware Constitution is granted to the General Assembly, provided a two-thirds vote is first obtained.⁵⁹ Additionally, unlike many states, amending Delaware's Constitution requires two pieces of legislation, referred to as "legs," which are enacted in successive General Assemblies (e.g. the 147th and the 148th). The first leg proposes, in its title, an amendment to the Delaware Constitution. The second leg, enacted in the succeeding General Assembly, concurs in the amendment proposed in the first leg.⁶⁰ Delaware does not have public referendums. The Governor may not sign or veto a constitutional amendment. Such amendments become part of the Constitution immediately upon passage of the second leg, unless the constitutional amendment itself specifies a different time frame.⁶¹

Example of a Bill Title for a Constitutional Amendment in the First Leg:

AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, § 11 OF THE DELAWARE CONSTITUTION RELATING TO CERTIFICATION OF QUESTIONS OF LAW TO THE SUPREME COURT.

Example of a Bill Title for a Constitutional Amendment in the Second Leg:

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE IV, § 11 OF THE DELAWARE CONSTITUTION RELATING TO CERTIFICATION OF QUESTIONS OF LAW TO THE SUPREME COURT.

⁵⁹ See Del. Const. art. XVI, § 1.

⁶⁰ The Delaware Supreme Court has held that defects in the title of the second leg of a constitutional amendment, such as the exclusion of the word "concurring" or "agreeing," are not fatal as Article II, § 16 (relating to bill titles as serving to notify the public of legislation) is inapplicable to constitutional amendments, which have their own notice requirements under Article XVI, § 1. See *Opinion of the Justices*, 194 A.2d 855 (Del. 1963).

⁶¹ *Opinion of the Justices*, 190 A.2d 519 (Del. 1963) ("Article XVI, Section 1 [of the Delaware Constitution] provides that when final passage of a proposed amendment by yea and nay vote has taken place in both Houses of the General Assembly, 'the same shall thereupon become part of the Constitution.' This final passage [in the second Chamber] . . . is therefore the effective date of the amendment.").

An example of the first leg of a constitutional amendment is provided in Appendix A-9.

There are three ways to draft the second leg of the constitutional amendment:

- (1) Use the exact text from the first leg in the second leg, except that the bill title in the second leg reflects that the General Assembly is “concurring in” the amendment rather than “proposing”. This is the “exact text method”. An example of the second leg of a constitutional amendment that uses the exact text method is provided in Appendix A-11.
- (2) Include the entire text of the first leg, bill title and all, in one “WHEREAS” clause and state in another “WHEREAS” clause that the first leg passed the prior General Assembly with a two-thirds vote and was publicized in accordance with Article XVI, § 1 of the Delaware Constitution. Following the enactment clause, the body of the bill then concurs with the prior action. This is the “whereas clauses method”. An example of the second leg of a constitutional amendment that uses the whereas clauses method is provided in Appendix A-12.
- (3) Includes the entire text of the first leg, bill title and all, in one “WHEREAS” clause and states in another “WHEREAS” clause that the first leg passed the prior General Assembly with a two-thirds vote and was publicized in accordance with Article XVI, § 1 of the Delaware Constitution. Following the enactment clause, however, set forth the language of the amendment to the Constitution in the body of the bill. This is the “hybrid method”. An example of the second leg of a constitutional amendment that uses the hybrid method, is provided in Appendix A-10.

The hybrid method is the preferred method for drafting constitutional amendments. When using the hybrid method or whereas clauses method, do not forget to include the body of the bill.

When preparing legislation for a second leg, include in the synopsis the bill number for the amendment’s first leg, for ease of reference.

Although some constitutional amendment bill titles include the year that the current Constitution was created, it is unnecessary and just allows for the possibility of another number typo. Further, no one cites the year the current Code was enacted when including “Delaware Code” in a bill title.

Drafting amendments to the Constitution differs from drafting Code provisions in the following ways:

- (1) The Constitution should be more abstract than the Code and should be drafted as such. This often requires the drafter to avoid the detail of a Code provision and to choose brief, general language.
- (2) In drafting amendments to the Constitution, the drafter should take the long view. The Constitution has been in place for over 100 years. Amendments should be drafted with this in mind.

- (3) While drafters are encouraged to do Code “clean up”, drafters should avoid replacing archaic words or changing the structure of the Constitution.

There is at least one similarity, however. All constitutional amendments should be drafted using the strike through and underline process. While § 109 of Title 1 does not require this process be used for constitutional amendments, it is the preferred process among legislators and Legislative Hall drafters. This process is discussed in detail in Part IV.

B. Charter Amendments.

Under the Delaware Constitution, the General Assembly has the power to enact and amend certain charters, including municipal charters, and some types of bank charters through special acts of incorporation. Charter bills which change a municipal or bank charter require a two-thirds vote.⁶²

While the General Assembly retains the ultimate power to enact and amend municipal charters, in 1961 the General Assembly delegated some of that authority through the home rule statute, 22 *Del. C.* § 801 - § 836. The General Assembly required municipalities desiring to exercise the authority granted by the home rule statute to file a copy of their existing charter with the Secretary of State and the Director of the Legislative Reference Bureau, the predecessor to the Division of Research, before June 1, 1963. Eleven municipalities availed themselves of this invitation: Bellefonte, Delaware City, Elsmere, Harrington, Middletown, Milton, Newark, New Castle, Smyrna, Wilmington, and Wyoming. Having met the filing requirement, these 11 municipalities may amend their own charters rather than coming to the General Assembly and requesting their charter be amended. The process for a municipality to amend its own charter is set out in the home rule statute, specifically in 29 *Del. C.* §§ 811–813.

One of the major problems relating to charters does not directly involve charter bills and yet it can be a trap for an unwary bill drafter. Some bills, especially those amending Title 22, directly affect incorporated municipalities. If those bills indirectly amend the charter of one or more incorporated municipalities, then a super-majority vote is needed for the provisions to be effective on municipalities.⁶³

It is important to note that the client has a choice in such a situation. If the client does not mind that a conflicting provision in a municipal charter will control over the legislation, the legislation may be enacted with a simple majority. This situation is reflected in *City of Newark v. Weldin*, 1987 WL 7536 (Del. Ch. 1987), when the Chancery Court concluded, with respect to the Law Enforcement Officer’s Bill of Rights, that because the legislation received only a simple majority, yet it impliedly impacted a municipal charter, it was “ineffective where it comes into contact with specific provisions of that charter.”

⁶² See Del. Const. art. IX, § 1.

⁶³ See *Buckingham v. Killaran*, 35 A.2d 903 (Del. 1944) and *Opinion of the Justices*, 276 A.2d 736 (Del. 1971) (holding a bill which indirectly amends a municipal charter requires the same two-thirds vote as a bill that directly amends one).

When a bill amends a specific municipal charter, the bill title should name the municipality and state that it is amending the charter thereof, along with the usual “relating to” language. A reference to the chapter and volume of the Laws of Delaware containing the entire charter, with the notation “as amended”, may be included; however, drafters increasingly prefer to draft the title without the reference to the Laws of Delaware, as this lessens the possibility for creating an error in the Laws of Delaware reference. It also saves the drafter time, as the drafter no longer has to locate the date of the last reincorporation and search for the appropriate Laws of Delaware citation. And, there is only one current charter per municipality, like there is only one current Constitution and Code for Delaware, so going to the charter as it was last reincorporated, which could be years or decades old, will not provide an accurate version.

Example of a Bill Title for a Charter Amendment:

AN ACT TO AMEND THE CHARTER OF THE CITY OF LEWES
RELATING TO THE CONDUCT OF ELECTIONS.

**Example of a Bill Title for a Charter Amendment (with reference to
the Laws of Delaware):**

AN ACT TO AMEND CHAPTER 278, VOLUME 72, LAWS OF
DELAWARE, AS AMENDED, ENTITLED “AN ACT TO
REINCORPORATE THE TOWN OF MILLVILLE,” RELATING TO
THE TOWN MANAGER.

When amending a charter, be aware of other provisions of the Code that restrict municipal power, such as Chapter 77 of Title 15 (regarding elections), § 111 of Title 22 (regarding limitations on firearm regulations), and § 5802(4) of Title 29 (regarding the Public Integrity Commission’s review of a municipality’s code of ethics).

An example of a bill to amend a town charter is provided in Appendix A-13.

Section 4: Bills with Special Provisions.

In addition to special types of bills, a drafter must also be aware of bills with special provisions. Specifically, bills with super-majority vote requirements, bills creating regulatory boards and agencies, bills with fiscal impacts, and bills amending the Laws of Delaware are discussed.

A. Bills with Super-Majority Vote Requirements.

As discussed in Chapter 2, Section 2, D. Enactment Clause, when a legislative act requires a super-majority vote, the requirement must be included in the enactment clause. For ease of reference, a list of the different types of legislation requiring a super-majority vote follows:

Constitutional Citation

Vote Requirement

Three-fifths (3/5) of all the members elected to each house

Article III, § 18

To override the Governor's veto.

Article VIII, § 6(c)

To appropriate funds from the 2% "Rainy Day Fund" "in the event of emergencies involving the health, safety or welfare" of Delaware's citizens.

Article VIII, § 6(d)

To appropriate from the Budget Reserve Account "such additional sums as may be necessary to fund any unanticipated deficit" or "to provide funds required as a result of any revenue reduction enacted by the General Assembly."

Article VIII, § 10(a)

To increase the effective rate "of any tax levied or license fee imposed by the State."

Article VIII, § 11(a)

To impose or levy a "tax or license fee."

Two-thirds (2/3) of all the members elected to each house

Article II, § 9

To expel a member of the House by House members or to expel a member of the Senate by Senate members.

Article II, § 19

To pass "laws relating to the laying out, opening, alteration or maintenance of any road or highway which forms a continuous road or highway extending through at least a portion of the three counties of the State."

Article III, § 20(b)

To determine "that the Governor is unable to discharge the powers and duties of his or her office because of mental or physical disability."

***Constitutional
Citation***

Vote Requirement

***Two-thirds (2/3) of all the members elected to each house
(continued)***

Article IV, § 1

To establish additional courts (not judges).

Article IV, § 28

To give jurisdiction to inferior courts or justices of the peace of “such ... misdemeanors as the General Assembly may from time to time ... prescribe.”

Article VI, § 1

To impeach by the House; to convict by the Senate.

Article IX, § 1

To enact general incorporation laws and special acts of incorporation.

Article XVI, § 1

To amend the Delaware Constitution, which requires passage by two consecutive General Assemblies.

Article XVI, § 2

To present to the voters the question of whether there should be a State constitutional convention.

29 *Del. C.* § 912

To ratify amendments to the U.S. Constitution (noting, however, that since one General Assembly cannot bind a future General Assembly except by amending the Delaware Constitution, this vote requirement is advisory only: i.e., a future General Assembly, either explicitly or implicitly, could negate this “requirement” by a vote by a simple majority).

Three-fourths (3/4) of all the members elected to each house

Article VIII, § 3

To borrow money or create a debt “by or on behalf of the State,” except “to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debts.”

Article VIII, § 4

To appropriate money to or issue or loan bonds of this State to any county, municipality or corporation; to pledge the credit of the State by guaranteeing or endorsing the bonds or other undertakings of any county, municipality or corporation.

2 *Del. C.* § 1405(i)

The Delaware Transportation Authority may not issue bonds unless the General Assembly approves of the purpose for which the bonds are issued and the maximum amount of such bonds.

B. Bills Creating Regulatory Agencies, Boards, or Commissions.

Over the years, the Joint Sunset Committee has established a consistent set of objectives and language for statutes governing regulatory boards and commissions. To eliminate the need for constant rewriting of bills which establish new agencies, boards, or commissions, use the following standardized language:

(1) Suggested language for legislation which establishes a new regulatory entity.

The primary objective of the [name of agency, board, or commission], to which all other objectives and purposes are secondary, is to protect the general public, and, specifically, those persons who are direct recipients of services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered. The secondary objectives of the [name of agency, board, or commission] are to maintain minimum standards of practitioner competency and to maintain reasonable standards in the delivery of services by the practitioners to the public. In meeting its objectives, the [name of agency, board, or commission] shall develop standards assuring professional competence; shall monitor complaints brought against practitioners regulated by the [name of agency, board, or commission]; shall adjudicate at formal complaint hearings; shall promulgate rules and regulations; and shall impose sanctions, where necessary, against practitioners.

(2) Suggested language for member qualifications.

Because the Joint Sunset Committee is very strict regarding conflicts of interest for members of regulatory entities, use the following language when conflicts may arise:

To serve on the [name of agency, board, or commission], a public member may not be and may not ever have been a [name of profession or occupation to be regulated], nor a member of the immediate family of a [practitioner of the profession or occupation]; may not have ever been employed by a [practitioner of the profession or occupation]; may not ever have had a material or financial interest in the providing of goods and services to [practitioners of the profession or occupation]; and may not ever have been engaged in any activity directly related to [name of the profession or occupation]. A person may not be a public member of [name of agency, board, or commission] if a member of the person's immediate family is a [practitioner of the profession or occupation] or is an employee of a [practitioner of the profession or occupation]; or if a member of the person's immediate family has a material or financial interest in the providing of goods or services to [a practitioner of that occupation]. A public member must be accessible to inquiries, comments, and suggestions from the general public.

(3) Suggested language for term limitations.

Term limitation language must be included in all regulatory bills.

Each member of the [name of agency, board, or commission] serves for a term of 3 years, and may succeed himself or herself for one additional term; but if a member was initially appointed to fill a vacancy, the member may succeed himself or herself for only one additional full term. A person appointed to fill a vacancy on the [name of agency, board, or commission] holds office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment.

(4) Suggested language for staggered terms.

In creating new agencies, boards, committees, or other entities, staggered terms are often used for the initial appointments, to create a changing membership throughout the life of the entity.

Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for five-year terms. Thereafter, all members shall serve five-year terms.

(5) Suggested conflict-of-interest language for officers.

A member of the [name of agency, board, or commission], while serving on the [agency, board, or commission], may not be a president, chairperson, or other official of a professional [name of profession or occupation] association. The provisions of Chapter 58, Title 29 (State Employees', Officer' and Officials' Code of Conduct) apply to all members of the [agency, board, or commission] and to all agents appointed or otherwise employed by the [agency, board, or commission].

(6) Suggested language for persons desiring to be licensed.

An applicant who is applying for initial licensing under this chapter must provide the information requested on an application form approved by the Division of Professional Regulation. An application form may not request a photograph of the applicant, place of birth, length of state residency, or personal references.

(7) Suggested language for notice and service of process.

Upon the receipt of a formal complaint from the Attorney General's office regarding a practitioner regulated by the [name of the agency, board, or commission], the [agency, board, or commission] shall schedule the time and place for a full hearing of the matter. The full hearing must take place as soon as practicable. The [agency, board, or commission] shall cause a copy of the complaint, together with a notice of the time and place scheduled for the hearing, to be personally delivered to or served upon the accused practitioner at least 20 days before the date of the scheduled hearing. If the accused practitioner cannot be located or if personal service cannot be affected, substitute service may be affected in the same manner as with other civil litigation.

(8) Required language for granting authority to name a person to serve on a board, commission, task force, etc.

In 2013, President Pro Tempore Patricia Blevins and Speaker Peter Schwartzkopf issued a memorandum directing that future legislation creating boards, commissions, task forces, etc. and granting authority to the President Pro Tempore, Speaker, Minority Leaders, or any other member of the General Assembly to name a person to serve on such an entity use the word "appoint" rather than "designate," "name," or another word.

C. Bills with Fiscal Impacts.

The Delaware Constitution provides an important requirement to consider when drafting a bill with fiscal impacts. Article VIII, § 2 of the Constitution provides, “[a]ll bills for raising revenue shall originate in the House of Representatives.” The Delaware Supreme Court has indicated that “to qualify as a revenue-raising bill, within the purview of this constitutional provision [Article VIII, § 2], the money derived from the tax imposed must be available for the general government uses and purposes of the taxing sovereignty”⁶⁴ Additionally, the Court has noted that there is a much quoted “statement in 1 Story on the Constitution (5th Ed.) Sec. 880, that the constitutional limitation here under consideration ‘has been confined to bills to levy taxes in the strict sense of the words.’”⁶⁵ Earlier, the Delaware Superior Court stated, “[r]evenue bills are . . . those which take money from the people without giving a direct equivalent in return therefor.”⁶⁶ The Court noted, “[i]f this is the correct meaning of revenue it is not something which people may pay at their option but which they are compelled to pay and for which they receive nothing in return, other than the rights of government which are enjoyed by all citizens alike.”⁶⁷

Furthermore, Article VIII, § 11(a) of the Constitution requires the affirmative vote of 3/5 of all the members elected to each Chamber to pass a bill enabling the State to impose or levy a new tax or fee.⁶⁸ In addition to including a super-majority parenthetical in the enactment clause of legislation imposing a new tax or fee, when creating a new fee to be imposed by a State agency, also include language in the Code limiting the agency’s authority in setting the fee to that which reasonably reflects the costs necessary to defray the expenses of the agency in performing the activity for which the fee is authorized. If the agency’s expenses are defined in advance, a drafter can fulfill this requirement by drafting language that imposes a limit on the fee that can be imposed. However, this information is often not available and so more general language limiting the fee to that which is needed to defray “reasonable costs” is typically used.

Examples:

The amount to be charged for the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the Department.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division in its service on behalf of the Board.

⁶⁴ *Opinion of the Justices*, 233 A.2d 59, 62 (Del. 1967).

⁶⁵ *Id.*

⁶⁶ *Yourison v. State*, 140 A. 691, 692 (Del. Super. 1928).

⁶⁷ *Id.*

⁶⁸ Article VIII, § 10(a) requires the same super-majority vote to increase the effective rate of any tax levied or fee imposed by the State.

There are also statutory requirements for bills with fiscal impacts. For example, when a bill or joint resolution would authorize expenditures not specifically provided for in the bill or specifically appropriates money not authorized within the annual budget, a three year fiscal projection is attached prior to committee consideration in the Chamber of origin.⁶⁹ The fiscal projection is also required when revenue is reduced.⁷⁰

The fiscal projection is commonly referred to as a “fiscal note” and is prepared by the Controller General’s Office. After introduction of a bill, the Controller General’s Office determines if a fiscal note is necessary and, if so, an analyst will prepare a fiscal note to be attached to the bill. The fiscal note includes full cost data such as salaries, operating costs, other employment costs, capital outlays, and debt service.⁷¹ The fiscal note also must include projections on any impact related to a pension or retirement plan.⁷² A fiscal note may be amended after amendments are added to a bill that would impact the fiscal note.⁷³ The requirement for a fiscal note may be waived by a majority vote of the Chamber in which the legislation is pending.⁷⁴

In addition, when a bill would impose a new fee or increase existing fees, a fee impact statement is required.⁷⁵ The Controller General’s Office is responsible for preparing a fee impact statement to be attached to the bill. A fee impact statement includes: (1) the purpose of the proposed new fee or fee increase; (2) a general identification of the persons, business entities or organizations affected by the legislation; (3) the impact of the proposed new fee or fee increase on these affected persons, business entities or organizations; and (4) the intended use by the agency of the revenues generated by the new fee or fee increase.⁷⁶ As with a fiscal note, a fee impact statement must be added before the bill is considered in committee in the Chamber of origin and it may be waived by a majority vote of the Chamber where the legislation is pending.⁷⁷

D. Bills Amending the Laws of Delaware.

Even after a bill has been enacted, it may be necessary to amend the bill itself. In such a situation, one way to do so is to amend the bill as it exists within the Laws of Delaware. Amend the bill as it exists within the Laws of Delaware only when the bill is one that was not meant for inclusion in the Code or the reason for amending the bill is to alter a bill Section not intended to be included in the Code, for example, a sunset date. Otherwise, amend the Code.

⁶⁹ See 29 Del. C. § 1901(a) and House Rule 21(a).

⁷⁰ See 29 Del. C. § 1903.

⁷¹ See *id.* at § 1902.

⁷² See *id.* at § 1901(b).

⁷³ See *id.* at § 1904.

⁷⁴ See *id.* at § 1908.

⁷⁵ See 29 Del. C. § 913 and House Rule 21(b).

⁷⁶ See *id.*

⁷⁷ See *id.*

In drafting a bill amending the Laws of Delaware, do the following four steps:

- (1) Draft the title of the bill that amends the Laws of Delaware to include the chapter and volume of the bill being amended.

Given the need to amend Chapter 349, Volume 78 of the Laws of Delaware, which dealt with driving under the influence, then the drafter would draft the following bill title:

AN ACT TO AMEND CHAPTER 349, VOLUME 78 OF THE LAWS OF DELAWARE RELATING TO DRIVING A VEHICLE UNDER THE INFLUENCE.

- (2) Include in the prefatory language for the bill amending the Laws of Delaware the Section of the bill being amended.

Given the need to amend Section 2 of Chapter 349, Volume 78 of the Laws of Delaware, then the prefatory language would begin:

Section 1. Amend Section 2, Chapter 349, Volume 78 of the Laws of Delaware

- (3) To make the needed change to the Laws of Delaware, generally use the strike through and underline process and note such in the prefatory language.

Given the need to change the sunset date of an enacted bill from June 30, 2014 to June 30, 2016, then the drafter would draft the following:

Section 1. Amend Section 2, Chapter 349, Volume 78 of the Laws of Delaware by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 2. The provisions of this Act shall sunset at the end of ~~June 30, 2014~~ June 30, 2016, unless such provisions are reestablished by an Act of the General Assembly.

- (4) Draft the synopsis to clearly state the purpose of the amendment.

Example:

This Act extends the sunset provision contained within Volume 78, Chapter 349, of the Laws of Delaware by two years, to June 30, 2016. Volume 78, Chapter 349 of the Laws of Delaware provided the State the same statutory transfer rights afforded defendants charged with Driving Under the Influence.

Although the strike through and underline process is used to show amendments made to the Laws of Delaware, the Code Revisors do not apply the changes to the Laws of Delaware being amended. Instead, the amendment will be reflected in the Laws of Delaware of the year of the amendment. For example, an amendment which is made in 2015 to Laws of Delaware of 2009-2010 will be reflected only in the Laws of Delaware of 2015-2016. **Be mindful when a further amendment to a provision contained only in the Laws of Delaware is necessary and follow the following example:**

Example:

Assume Chapter 349, Volume 78 of the Laws of Delaware contains the following language: “Section 2. The provisions of this Act shall sunset at the end of June 30, 2014, unless such provisions are reestablished by an Act of the General Assembly.”

Further assume that in 2014 the General Assembly acted to extend the sunset to June 30, 2016, and the Governor signed the legislation, which is found in Chapter 235, Volume 79 of the Laws of Delaware. If a drafter needed to extend the sunset date another year, the drafter would do all of the following:

(1) Draft a bill title that references Chapter 235, Volume 79 of the Laws of Delaware.

(2) Draft the bill body using the language of Chapter 235, Volume 79 of the Laws of Delaware and making the additional changes using strike through to indicate existing language being removed by the bill and italicized double underline to indicate new language added by the bill, as follows:

Section 1. Amend Section 1, Chapter 235, Volume 79 of the Laws of Delaware by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 2. The provisions of this Act shall sunset at the end of ~~June 30, 2014~~ ~~June 30, 2016~~ *June 30, 2017*, unless such provisions are reestablished by an Act of the General Assembly.

Note: When drafting a bill to amend the Laws of Delaware to extend or remove a sunset date provision, the drafter and the client must be mindful of the sunset date. The legislation should be introduced well in advance of the sunset date, or the client should be aware of the impending nature of the sunset date in shepherding the bill through the process. Additionally, the Governor must be made aware of the sunset date. Bills have sunsetted waiting for the Governor to sign amendments to the sunset date. Finally, if a sunset date in legislation passed by a supermajority vote needs to be extended or removed, then the legislation doing so must be passed by the same supermajority vote.

An example of a bill amending the Laws of Delaware is provided in Appendix A-7.

Chapter 3: Substitute Bills.

A substitute bill is the complete replacement of an original bill, often because the original needs to be materially or substantially changed that a substitute is preferred to amending the original bill. Remember the following when drafting a substitute bill:

- (1) A substitute bill may have all of the same parts as the original bill.
- (2) The title of a substitute bill must be identical to the title of the original bill per rules of the House and custom of the Senate.⁷⁸
- (3) A substitute bill must be introduced by the prime sponsor in the Chamber in which the original bill was introduced before third reading of the original bill.⁷⁹
- (4) Once a substitute bill has been introduced, which is done without a vote, the original bill is void.
- (5) In the Senate, a substitute bill takes the place of the original bill wherever the original bill is in the process. In the House, a substitute bill is assigned to committee following introduction.⁸⁰
- (6) House Rule 24(a) requires the substitute to be “assigned to committee and follow the same procedure as other bills.”

The major difference in structure between a substitute bill and an original bill is that the bill caption changes from “House [or Senate] Bill No. 123” to “House [or Senate] Substitute No. 1 for House [or Senate] Bill 123”.

A synopsis to a substitute bill should detail the differences between the substitute bill and the original bill, in addition to explaining what the bill does. Sometimes, the differences between a substitute bill and the original bill can be slight; including the differences in the synopsis to the substitute bill aids the reader.

An example of a substitute bill, with its original bill, is provided in Appendix A-8.

⁷⁸ See Chapter 2, Section 2, B of this part on Bill Titles and House Rule 24(c).

⁷⁹ But see Senate and House Rules regarding exceptions to the third reading requirement.

⁸⁰ See House Rule 24.

Chapter 4: Amendments.

The word “amendment” means something different in the legislative drafting context than it does in the context of court decisions. In many court decisions, any legislation which changes an already existing statute considered is an amendment, i.e., most bills “amend” the Code. In the actual drafting of legislation, however, an amendment is a separate piece of legislation having the limited purpose of deleting or inserting text in a bill, a substitute bill, a resolution, or another amendment. Unless stated otherwise, when this manual refers to an amendment, it means within the context of legislative drafting.

A Senate amendment may amend any Senate bill, House bill, or resolution that is before the Senate. A House amendment does likewise in the House. Remember, only a Representative can co-sponsor a House amendment and only a Senator can co-sponsor a Senate Amendment.

In drafting an amendment, create the amendment based on the original legislative vehicle being amended. **Never attempt to amend the engrossed form of a piece of legislation.** Even so, consider the engrossment process when drafting an amendment. Amendments are integral to the engrossment process and vice versa. Only if an amendment is “engrossable” is it really correct. Therefore, Part VIII, Chapter 5, on Engrossments should be consulted by the drafter.

The scope of an amendment must not be beyond the title of the bill. A drafter may not do indirectly what he or she may not do directly.

Because of the purpose and highly specialized use of an amendment, the heading and general format of an amendment differ greatly from those used for other forms of legislation. An amendment typically does not contain the provisions discussed in Chapter 2, Section 2 of this part (Parts of Bills), except to the extent the amendment changes those provisions and it must contain a synopsis⁸¹ detailing the changes made to the bill by the amendment. An amendment’s synopsis describes the impact of each amendatory instruction on the bill and whether the amendment is “technical” or “substantive” in nature.

Furthermore, in drafting a bill which amends the Code, all deletions and insertions are based on the appropriate title and section of the Code. In contrast, drafting an amendment requires all changes made by the amendment relate specifically to the legislative vehicle being amended, and not directly to the statute itself. This is because an amendment may alter any part of a bill, except the bill title, not just the parts that may amend the Code. Thus, a bill will refer to specific sections, subsections, or paragraphs of the Code, but an amendment to the bill usually refers to the bill’s line numbers. The exception is when the amendment’s purpose is to strike in its entirety another amendment already attached to the bill. In such an instance, it may simply strike the other amendment in its entirety, or it may strike the numbered lines of the amendment; both methods are indicated in the following example.

⁸¹ See Senate Rule 8(a) and House Rule 23(b).

Example of an Amendment Striking an Entire Amendment:

Amend House Bill No. 404, as amended, by striking House Amendment No. 2 in its entirety.

Example of an Amendment Striking an Amendment by Line Numbers:

Amend Senate Bill No. 45, as amended, by striking lines 1 to 23 of House Amendment No. 4 in their entirety.

Both of these methods have the effect of restoring the wording and punctuation of the bill as it existed immediately prior to the adoption of the stricken amendment.

An amendment may also add new Sections to a bill. Those Sections look just like the other Sections of the bill, except for instructional language such as “FURTHER AMEND House Bill No. 32 by adding thereto the following new Sections:”.

Specific additions or deletions contained within the body of the amendment must be in conformity with the amendment format for deleting text from or inserting text into a bill. This format is discussed in Part V.

When drafting an amendment to a bill, check for the possibility that it may, by implication, amend other provisions of the Code or bill in a manner not intended. Implied amendments are lawful, although they are not favored.

Additionally, determine if the amendment seeks to amend a portion of the bill already addressed in another amendment. Conflicting amendments may be out of order and will cause critical problems for both engrossing the amendment and codifying the bill. Consult Part VIII, Chapter 5, on Engrossments for further information.

An amendment *to* an amendment (called an amendment of the second degree) is allowed, but an amendment to an amendment to an amendment (called an amendment of the third degree) is disfavored in the Senate and forbidden in the House.⁸²

Examples of amendments are provided in Appendix A-3 and A-4, an example of an amendment to an amendment is provided in Appendix A-5, and an example of an amendment to a bill, as amended, is provided in Appendix A-6.

⁸² See House Rule 40(a)(1).

Chapter 5: Resolutions.

Resolutions are legislative vehicles that enable the General Assembly to express itself rather than to amend the Code.⁸³

Section 1: Resolutions.

A resolution is the formal expression of the opinion, sentiment, or will of one or both Chambers of the General Assembly. The Senate rules contain general references to the preparation of resolutions.⁸⁴ The House rules specifically describe the three types of resolutions⁸⁵ and also contain information on the preparation of resolutions.⁸⁶

A resolution is effective only during the existence of the General Assembly which promulgates it.⁸⁷ Thus, a resolution purporting to take effect during a future General Assembly or to continue the spending or appropriating of money in subsequent General Assemblies is expressing only a desire, with no authority to enforce compliance. Simple and concurrent resolutions merely congratulate, condemn, or request persons, agencies, or actions in the executive and judicial branches of state government or at the federal level. Many task forces and commissions created by resolution, however, continue to meet during the next General Assembly before a reauthorizing resolution is passed.

Like bills, resolutions must have titles. Because resolutions do not amend or propose Delaware law, however, they do not require references to Delaware law. Instead, titles to resolutions typically begin with a present participle, such as “relating”, “designating”, “appointing”, “requesting”, “commending”, “establishing”, “directing”, etc.

Example of a Resolution Title:

CREATING AN AUTISM EDUCATIONAL TASK FORCE.

⁸³ The three types of resolutions are discussed in detail later in this Section.

⁸⁴ See Senate Rules 8 and 9.

⁸⁵ See House Rule 17.

⁸⁶ See House Rule 18 and 19.

⁸⁷ There is a difference of opinion as to whether or not the effect of a resolution extends beyond the General Assembly that created it. This manual takes the view that it does not. See footnote 87.

When drafting a resolution title proclaiming a day, week, or month, a drafter should set off the proclaimed day, week, or month by including it within quotation marks. When the proclaimed day, week, or month ends a sentence, whether in the title or elsewhere in the resolution, **ignore the grammatical convention regarding the placement of punctuation within quotation marks and instead follow the rules established by this manual**, which require the punctuation to be placed outside of the quotation marks, unless it is required to be included in Delaware law. See Part V, paragraph (a)(6) and Part VI, Chapter 2. Drafting Rules, Rule 23(h). This promotes consistency in all legislative drafting.

Example of a Title Proclaiming a Week:

RECOGNIZING THE WEEK OF APRIL 8-14, 2012, AS
“NATIONAL LIBRARY WEEK”.

Alternatively, avoid the punctuation issue by ending the sentence with “in the State of Delaware”.

Example of a Title Ending with “in the State of Delaware”:

DESIGNATING FEBRUARY 6, 2011, AS “RONALD
REAGAN DAY” IN THE STATE OF DELAWARE.

Since resolutions do not amend the Code, they do not include many of the provisions discussed in Chapter 2, Section 2 of this part, discussing Parts of Bills. While a resolution does not have an enactment clause, it does have a “BE IT RESOLVED” clause that follows at the end of the preamble (“WHEREAS” clauses).

Example of a Resolving Clause:

NOW, THEREFORE:
BE IT RESOLVED by the Senate of the 147th General Assembly
that

The text of a “BE IT RESOLVED” clause designates the type of resolution. A simple resolution’s “BE IT RESOLVED” clause will name only one Chamber, a concurrent resolution will have the second Chamber concurring with the first, and a joint resolution adds the phrase “with the approval of the Governor” to the concurrent resolution language.

The “BE IT RESOLVED” clauses should actually resolve that something be done rather than simply referring generally to the WHEREAS clauses. The “BE IT RESOLVED” clauses are the mechanism by which a Chamber or the entire General Assembly speaks and so should be a clear statement of the desired action.

A joint resolution must have a synopsis, while simple and concurrent resolutions contain a synopsis by custom.⁸⁸

A. Simple Resolution.

A simple resolution is passed only by the Chamber in which it is introduced. It wields no legal authority. It is most often used to establish a Chamber's procedures, create single chamber task forces and study groups, or request changes in State or federal policy. A simple resolution may also be used to congratulate sports teams or individuals, express condolences, declare the "sense of the Chamber" on a specific issue, or designate a day, week, or month, such as Administrative Professionals' Week or Domestic Violence Awareness Month (see Appendix A-15). It may also be used to request a government body take some action (see Appendix A-16).

B. Concurrent Resolution.

A concurrent resolution is used to accomplish the same purpose for the entire General Assembly that a simple resolution accomplishes for either the House or Senate singly. A concurrent resolution passed by both the House and the Senate does not become a statute, nor does it have the effect of law, nor can it be used for any purpose which requires the exercise of legislative power. It can create joint (House and Senate) task forces and study groups. Concurrent resolutions are also used for the same purposes as simple resolutions, and may even be used to ratify amendments to the federal Constitution. An example of a concurrent resolution is provided in Appendix A-17.

C. Joint Resolution.

A joint resolution is the most formal resolution. This type of resolution must go through the committee process, be passed by both the House and the Senate, and be signed by the Governor.⁸⁹ Although not a law, a joint resolution has the force of law while in effect. Where a simple or concurrent resolution would "request" a change in policy by a State agency, joint resolutions typically "direct" a change. However, as with simple and concurrent resolutions, a joint resolution is effective only during the General Assembly in which it was passed and approved,⁹⁰ unless the resolution explicitly designates a shorter timeframe. An example of a joint resolution is provided in Appendix A-18.

⁸⁸ See Senate Rule 8(a) and House Rule 18(b). House Rule 18(c) requires it of any resolution creating a task force.

⁸⁹ See Del. Const. art. III, § 18.

⁹⁰ As stated in footnote 84, this manual takes the view that the effect of a resolution does not extend beyond the General Assembly that created it. Therefore, if the client intends for the legislation to extend beyond the life of a General Assembly, the better practice is to draft a bill.

Section 2: Resolutions Creating Task Forces.

It is preferable to create a task force by resolution, rather than by a bill, since a task force is not intended to be permanent and so does not need to be memorialized in the Code. Task forces are frequently created to investigate topics of concern among legislators. Task forces are frequently composed of members appointed by the Governor, legislators, agency heads, or those outside of government. Typically, task forces are required to meet to establish themselves, discuss the topic of concern, and draft a report to be provided to the General Assembly and others. The resolution also provides a date by which a report is due.

When drafting legislation that creates a task force, do all of the following:

1. Ensure that someone is charged with organizing the committee. The best way to accomplish this is to appoint a chair in the language of the resolution. If it is not possible to appoint a chair in the resolution, consider appointing the prime sponsor or another person as the temporary chair to organize the initial meeting.
2. Use the word “appoint” when granting to a legislator the authority to name a person as a member of a task force, as discussed in Chapter 2, Section 4, B of this part.
3. Assign appointing authority for each appointee to a specific person or agency singularly. Avoid joint appointing authority.
4. Ensure the success of the task force by clearly identifying who will provide its staff. The practice is for the state agency most closely aligned with the purpose of the task force to staff it. Failing to clearly delegate this responsibility causes confusion and can hamper the work of the task force.
5. For recording keeping purposes, require that the task force provide certain information to the Director of the Division of Research, including a list of the members of the task force, including the name of the person who appointed them, and meeting notices, agendas, and minutes.
6. Avoid the need for a resolution to extend the reporting date for the task force by providing the task force with a reasonable amount of time to conduct their business and produce a report. The reporting date should occur before the end of the General Assembly creating the task force.
7. In addition to the information discussed in number 5 above, specify that the task force is to deliver a copy of any required report, when completed, to the attention of the Director and the librarian of the Division of Research.

Additionally, when the membership of a task force is to be constituted by virtue of the position of the members, draft the membership list using one reference to the members and enabling them to appoint a designee, rather than multiple references to the appointment power following each member.

Example of Task Force Membership List Where Members Serve by Virtue of Position.

Rather Than This:

BE IT FURTHER RESOLVED that the Task Force shall be composed of the following members:

- (1) The Chair of the Developmental Disabilities Council, or a designee appointed by the Chair.
- (2) The Chair of the Criminal Justice Council, or a designee appointed by the Chair.
- (3) The Speaker of the House, or a designee appointed by the Speaker.
- (4) The President Pro Tempore of the Senate, or a designee appointed by the President Pro Tempore.

Say This:

BE IT FURTHER RESOLVED that the Task Force shall be composed of the following members, or a designee appointed by the member serving by virtue of position:

- (1) The Chair of the Developmental Disabilities Council.
- (2) The Chair of the Criminal Justice Council.
- (3) The Speaker of the House.
- (4) The President Pro Tempore of the Senate.

While all of these requirements are important for the success of a task force, from the perspective of the Division of Research, numbers 5 and 7 are vitally important as the Division is charged with tracking task force composition and with storing records and reports for later use by legislators and the public. When received, this information is also posted on the General Assembly's website at <http://legis.delaware.gov/TaskForces>.

Model legislation to establish a task force is provided in Appendix B. This legislation reflects the requirements set forth above. Model legislation to extend the final date of a task force is provided in Appendix C.

PART IV: STRIKE THROUGH AND UNDERLINE.

The General Assembly began using the strike through and underline process in January 2012 after the enactment of Senate Bill 63, 78 Del. Laws, ch. 90. This portion of the manual explains that process as applied to bills and discusses why resolutions fall outside this process.

Chapter 1: Bills.

(a) A bill must show the changes it proposes to make to the Constitution, the Code, the Laws of Delaware, or any other body of law by using the strike through and underline process.

- (1) This process first requires that the source material be accurate and current. The only way to ensure the source material is accurate and current is to use the Delaware Code Online or the other resources listed in Part II, Chapter 3 as the source material for bills.
- (2) Any change to the existing source material must be shown using either the ~~strike through~~ or underline font attribute. If the bill deletes text from the existing source material, the deletion must be shown using the ~~strike through~~ font attribute. If the bill inserts text into the existing source material, the insertion must be shown using the underline font attribute.

Example: The General Assembly further declares aquaculture in a closed system to be an agricultural activity ~~and that~~ under the authority of the Department of Agriculture which shall coordinate these types of aquacultural activities in the State.

(b) Using the strike through and underline process requires a drafter to consider and adhere to the following techniques to produce accurate, clear, and uniform legislative products:

- (1) **Prefatory language.** The prefatory language is the key component to the strike through and underline process. It serves as the instruction manual for the Code Revisors. Well-drafted prefatory language tells the Code Revisors how to change the Constitution or the Code and simultaneously furthers the client's intent and saves the drafter's time.
 - a. The prefatory language should, at a minimum, state the exact portion of the Constitution, Code, Laws of Delaware, or other body of law being amended and include the phrase "by making deletions as shown by strike through and insertions as shown by underline as follows:". The deletions and insertions language should be included even if making only deletions *or* insertions.

Example: Section 1. Amend § 101, Title 1 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

- b. “Strike through” is two words. Use “underline” rather than “underlining”, since “underlining” is often misspelled or spell-check transforms it into “underling” or “underlying”.
- c. Use the prefatory language to include any additional instructions that would aid the task of the engrosser or the Code Revisors.

Example: Section 1. Amend § 101, Title 1 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

See Part VI, Chapter 2: Drafting Rules, Rule 25(b) for a discussion of this language relating to Definitions.

- d. Section 109(d)(1) of Title 1 states that “[i]f the changes are such as do not lend themselves easily to this type of amendment [strike through and underline], the amending act may state that the section (specifying it by section and title number) is amended to read as thereafter set forth.” The prefatory language would be an important part of this process. However, using this process is disfavored by Legislative Hall drafters, except in rare circumstances, as it does not provide the context that the strike through and underline process provides. Instead, show the section to be deleted as struck through and the new section underlined. This provides the needed context.
- (2) **How much existing text to include.** It is difficult to construct a general rule regarding how much existing text to include within a bill, as each situation is unique. Take a surgical approach, however, and include only the smallest portion of text possible based on the changes made and the need for context in understanding the changes made. For example, if making changes only to a subsection, rather than the whole section, include only the subsection. Setting out large, unchanged portions of existing text makes finding the changes much more difficult and wastes printing resources.

Note: A drafter should always include the section heading for the Constitution or Code provision to be amended, even when the drafter has listed the section of the Constitution or section and title of the Code in the prefatory language and is changing a subsection far removed from the heading. Including the section heading adds context to the bill that enables the reader to locate the provision within the Constitution or Code.

Example: “§ 101. Designation and citation of Code.”

Note: A drafter should always include the introductory language to a listing provision in the Code, even when the drafter is changing an item in the list far removed from the introductory language. Including the introductory language adds context to the bill that enables the reader to better understand the item changed.

Example: [Introductory language in bold]

§ 222. General definitions.

When used in this Criminal Code:

(3) “Conviction” means a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a plea of nolo contendere accepted by the court.

- (3) **Amending “listing” sections.** When amending “listing” sections, such as definition sections, begin by including the introductory language of the definition section, even if it is not being changed. Then, include the paragraphs actually being amended. If paragraphs are being inserted, the drafter should not include all of the paragraphs following the insertion simply to change the number or letter designation. As discussed previously, and in Part VI, Chapter 2: Drafting Rules, Rule 25(b), this should be accomplished using the prefatory language. See Part VI, Chapter 2: Drafting Rules, Rule 29A for more discussion on this topic and an example.
- (4) **Show deleted text first.** If existing text is being deleted and replaced, show the deleted text first, then the inserted text.

Example: The Department ~~may~~ shall conduct a study of the deer population in the State.

- (5) **How much text to delete.** Ordinarily, strike through only the text that is to be deleted from the existing law. Sometimes, however, clarity may be aided by deleting additional existing text and then adding the new text. In such a case, consider the following:

If the Existing Law States: The applicant must file his or her application and the filing fee within 15 days.

Do Not Say: The ~~applicant department~~ must ~~file his or her~~ receive the application and the filing fee within 15 days.

Say: The ~~applicant must file his or her~~ department must receive the application and the filing fee within 15 days.

- (6) **Make changes to entire words, numbers, and internal hierarchy designations.** Following these techniques enables the reader to better see and comprehend the changes that are being made.

a. Make changes to entire words.

Do Not Say: ~~Because~~The department

Say: ~~Because~~The department

Do Not Say: applicantss

Say: ~~applicant~~ applicants

b. Make changes to entire numbers.

Do Not Say: The tenant has 30~~5~~ days

Say: The tenant has 30 35 days

c. When renumbering or relettering is required, include the parentheses enclosing the existing number or letter in the deletion.

Do Not Say: (~~3~~ 4)

Say: (~~3~~) (4)

- (7) **When underline is required.** Whenever a Section of a bill inserts text into the Constitution, Code, or Laws of Delaware, the inserted text must be underlined to indicate it is new text.
- (8) **When underline is not required.** Do not underline portions of the bill that are not intended for inclusion in the Constitution or Code. Provisions such as a preamble (“whereas” clauses), effective date or applicability clause, sunset clause, savings clause, severability clause, repealing clause, appropriations clause, or short title are typically not included in the Constitution or Code and, therefore, are not underlined. However, if the drafter intends to include one of these provisions in the Constitution or the Code, it must be underlined.

(c) Drafting Tips:

- (1) Do not use a chapter citation in the prefatory language unless you are adding an entirely new section (§) to the Code or amending multiple sections within a chapter. When amending multiple sections within a chapter, a reference to the chapter allows a drafter to include multiple Code sections within one bill Section. When amending a single existing section (§), the section number and title number will do the job. This ensures one less typographical error to worry about, especially because chapter numbers and section numbers do not always match; e.g., Chapter 5 of Title 11 begins with § 501 and continues through sections in the 1400s.
- (2) Do not use a section or subsection designation in prefatory language when adding a new section or subsection because if you have to change the designation, it will only need to be changed once – not twice.
- (3) Sometimes the Delaware Code Online may contain two of the same Code sections. This should occur only when one is effective currently and the other will be effective on some future date. The drafter need not include both sections in a bill, unless what is being changed now will be impacted by the changes in the “new” section. See Part VI, Chapter 2: Drafting Rules, Rule 30A, for additional information on this issue.
- (4) **Do not return to the old deleting and replacing method of amending the Code**, which was in place prior to the current strike through and underline process. Aside from confusing the reader who is accustomed to the strike through and underline process, a return to the old method may not accomplish the drafter’s intent, especially when removing specific phrases throughout the Code and replacing them with new phrases. A drafter should not presume that the Code always refers to a governmental unit, or any other phrase, in the same way every time. Variations in style can occur which must be accounted for. The only way to ensure accuracy is for the drafter to do his or her own searches to determine all possible variations and to correct those variations using the strike through and underline process.

Chapter 2: Resolutions.

Resolutions do not use the strike through and underline process, because they do not make additions or deletions to the Code.

Resolutions sometimes require an amendment to correct technical errors or make additions, particularly with respect to the membership of a task force. In these instances, use the instructional language contained in Part V to indicate changes being made to the resolution, but do not use strike through and underline.

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PART V: AMENDMENT FORMAT.

Beginning in January 2014, in light of the newly adopted strike through and underline process, Legislative Hall drafters began using a simpler, clearer format for legislative amendments. This portion of the manual discusses the proper format for legislative amendments.

(a) When drafting amendments, remember the following:

- (1) Just as with the prefatory language for bills, the instructional language in amendments is key to the amendment markup process, as it is the instruction manual for the engrosser and the Code Revisors. Well drafted instructional language furthers the client's intent, saves the drafter's time, and aids the task of the engrosser and the Code Revisors. And, even more so than with bills, poorly drafted instructional language can result in a client's intent not being fulfilled, if the language does not provide correct instruction or the amendment is unengrossable.
- (2) Always provide the line number of the text to be deleted from or inserted into the bill. If more context is needed to locate the appropriate text, indicate the location by reference to other text within the line number. When including a punctuation mark in the instructional language, write out the name of the punctuation mark as it is easier to read its name than to see its representation.

Example: AMEND House Bill No. 123 on line 7 by deleting “and the alleged violator” which appears after “officer” and before the comma therein.

- (3) In the instructional language, use the term “deleting” to remove text and “inserting” to add text.
- (4) In the instructional language, use the font attribute used in the bill. If the bill deletes text, show it in the instructional language as ~~struck through~~. If the bill inserts text, show it in the instructional language with an underline. If the text had no font attribute in the bill, show it that way in the instructional language. The text being deleted from the bill must include the proper font attribute, or lack thereof, so the engrosser understands how, if at all, to alter the bill.
- (5) In the instructional language, use the appropriate font attribute for text being inserted into the bill. If the text being inserted is new to the source material, it should be shown underlined. If the text is being deleted from the source material by the amendment, it should be deleted showing it without any font attribute and then inserted by showing it ~~struck through~~. However, if the inserted text is existing source material that the bill deleted but the amendment is now reinstating, it should be shown without any font attribute. The inserted language must fit seamlessly into the bill to tell the engrosser how to alter the bill and Code Revisors how to alter the Code.
- (6) Use quotation marks to indicate the text being deleted from or inserted into the bill, or to indicate bill text used for context within the instructional language. In doing so,

ignore the grammatical convention requiring certain punctuation be placed within the quotation marks. A period, comma, or other punctuation mark should be within the quotation marks if it appeared in the existing source material or must appear in the bill to properly amend the existing source material. A period, comma, or other punctuation mark should be outside of the quotation marks if it is part of the punctuation necessary for the instructional language sentence. See Part VI, Chapter 2: Drafting Rules, Rule 23(h) regarding quotation marks.

Given that Senate Bill No. 465 states on line 45:

The ~~applicant must file his or her~~ department must receive the application, proof of ownership, and the filing fee within 15 days.

If the amendment drafter wants to remove “proof of ownership”, then the drafter should use the following instructional language:

AMEND Senate Bill No. 465 on line 45 by deleting “, proof of ownership,” as it appears therein.

Be aware that if material within the quotation marks is quoted, as in the case of defined terms, it should be set off with double quotes, just as it does or would appear in the Delaware Code (ex. “water”).

- (7) Use “redesignating accordingly” in the instructional language when making a deletion from or insertion into an alphabetized listing section. This language enables the drafter to quickly make changes to designations that are needed after the drafter makes a deletion or insertion.

Given that House Bill No. 417 creates a new definition section on lines 105 to 122 of the bill, and designates the definitions (1) through (10), and now the drafter must insert a new defined term, “individual”, after line 115 and before line 118, then the drafter should draft the following instructional language and amendment:

AMEND House Bill No. 417 after line 115 and before line 116 by inserting the following and redesignating accordingly:

“(4) “Individual” means a human being.”

- (8) Drafting an instruction to delete entire lines and insert in lieu thereof new lines is a dangerous proposition that should be undertaken with extreme care.
- (9) Always include a synopsis to the amendment and accurately describe how the amendment impacts the bill.

(10) Do not amend the bill's synopsis. Remember, the bill's synopsis will not be published in the Constitution, Code, or Laws of Delaware.

(b) Explanations of and examples for some of the most common amendment drafting scenarios are provided as follows:

(1) **Deleting new text added by the bill.**

Given that Senate Bill No. 465 states on line 45:

The ~~applicant must file his or her~~ department must receive the application, proof of ownership, and the filing fee within 15 days.

To remove “proof of ownership”, then the drafter should use the following instructional language:

AMEND Senate Bill No. 465 on line 45 by deleting “, proof of ownership.” as it appears therein.

(2) **Replace new text added by the bill.** The following technique can be used for replacing any text (new text, existing text, deleted existing text) within the bill.

Given that Senate Bill No. 465 states on line 45:

The ~~applicant must file his or her~~ department must receive the application, proof of ownership, and the filing fee within 15 days.

To replace “proof of ownership” with “current business license”, use the following instructional language:

AMEND Senate Bill No. 465 on line 45 by deleting “, proof of ownership.” as it appears therein and inserting in lieu thereof “, current business license.”.

(3) **Reinserting source material text deleted by the bill.**

Given that House Bill No. 417 states on lines 17 through 19:

The court shall, ~~for any individual with an alcohol concentration of .15 or more or who refused a chemical test,~~ prohibit a person convicted of driving under the influence from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device.

To reinsert the deleted text, then the drafter should use the following instructional language:

AMEND House Bill No. 417 on lines 17 through 19 by deleting “~~, for any individual with an alcohol concentration of .15 or more or who refused a chemical test,~~” as it appears therein and inserting in lieu thereof “, for any individual with an alcohol concentration of .15 or more or who refused a chemical test,”.

(4) **Deleting additional source material text in the bill.**

Given that Senate Bill No. 465 states on line 45:

The ~~applicant must file his or her~~ department must receive the application and the filing fee within 15 days.

To remove “and the filing fee” from the source material, then the drafter should use the following instructional language:

AMEND Senate Bill No. 465 on line 45 by deleting “and the filing fee” as it appears therein and inserting in lieu thereof “~~and the filing fee~~”.

(5) **Deleting additional source material text in the bill and replacing it with new text.**

Given that Senate Bill No. 465 states on line 45:

The ~~applicant must file his or her~~ department must receive the application and the filing fee within 15 days.

To delete “15” and replace it with “20”, then the drafter should use the following instructional language:

AMEND Senate Bill No. 465 on line 45 by deleting “15” as it appears therein and inserting in lieu thereof “~~15~~ 20”.

(6) **Inserting additional text into a source material provision in the bill.**

Given that Senate Bill No. 465 states on line 45:

The ~~applicant must file his or her~~ department must receive the application and the filing fee within 15 days.

To add “proof of ownership” to the items to be provided to the department, then the drafter should use the following instructional language:

AMEND Senate Bill No. 465 on line 45 by inserting “, proof of ownership.” after “application” and before “and” therein.

- (7) **Deleting additional source material text not in a bill.** If the bill has amended only a portion of a section of the Code and now the amendment drafter wishes to delete a portion of the section that was not in the bill, the drafter should determine the appropriate place for the deletion of the additional source material and use the appropriate instructional language.

In a bill that amended § 101(d) beginning on line 3 of the bill where the amendment drafter now wants to delete a portion of subsection (c) the appropriate instructional language would be:

AMEND House Bill No. 234 after line 2 by inserting the following:
“(c) The Director shall set the filing fee on new license applications based on the average filing fee for similar applications in Maryland, ~~Pennsylvania, and New Jersey.~~”

Note: In the example above, if the prefatory language referred only to § 101(d), the drafter would also need to amend the prefatory language to accomplish the amendment to subsection (c).

- (8) **Inserting an additional new provision into the bill.** To insert an additional new Code provision into a Section of a bill, determine the appropriate place for the insertion of the new provision and use the appropriate instructional language.

In a bill that added a new Code section with subsections (a) through (c) and ended on line 55 before another bill Section beginning on line 56, the appropriate instructional language would be:

AMEND Senate Bill No. 465 after line 55 and before line 56 by inserting the following:
“(d) The person licensed under this chapter that provides outpatient treatment to a minor shall note in the minor’s medical record the name of each person present when such treatment is provided.”.

To insert an additional bill Section into a bill, determine the appropriate place for the insertion (typically the end) and use the appropriate instructional language. If the new bill Section needs to be inserted between existing bill Sections rather than at the end, do not renumber the bill Sections that follow. Instead, use the method discussed in Part VI, Chapter 2: Drafting Rules, Rule 30(h).

To include an effective date in the bill, then the appropriate instructional language would be:

AMEND Senate Bill No. 234 by inserting a new Section after line 55 as follows:

“Section 3. This act takes effect on July 1 following its enactment into law.”.

This language can also be used to insert an additional bill Section containing changes to the Code whether text is being deleted or inserted, or both. Remember to follow the rules for bills in Chapter 1 of this part.

- (9) **Deleting multiple lines or an entire bill Section from the bill.** To delete multiple lines or an entire bill Section, whether original source material or new text, do so using only instructional language as follows:

Example: AMEND House Bill No. 123 by deleting lines 6 through 9 in their entirety.

Example: AMEND House Bill No. 123 by deleting Section 4 of the Bill in its entirety.

With regard to deleting multiple lines of original source material in the bill, use this technique to replace the lines with original source material that has been stricken through (to effectuate a deletion of the original source material) by adding “and inserting in lieu thereof the following” and applying the strike through font attribute to the original source material as in the following example:

Example:

AMEND House Bill No.123 by deleting lines 6 through 9 in their entirety and inserting in lieu thereof the following:

~~“A person sentenced to two years or more under the Truth in Sentencing laws who is confined to any correctional facility administered by the Department may submit an application for review by the Board of Parole for the modification of his or her sentence.”.~~

With regard to deleting an entire bill Section, use this technique to replace the bill Section with a new bill Section containing new text by adding “and inserting in lieu thereof the following” to the instructional language followed by the text of the new bill Section, as in the following example:

Example:

AMEND House Bill No. 123 by deleting Section 4 of the Bill in its entirety and inserting in lieu thereof the following:

“Section 4. Amend § 101, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(e) A person sentenced to two years or more under the Truth in Sentencing laws who is confined to any correctional facility administered by the Department may submit an application for review by the Board of Parole for the modification of his or her sentence.”.

- (10) **Inserting multiple words into a sentence or provision.** To insert multiple words into a sentence or provision containing new text, use instructional language to delete the provision in its entirety by reference to the appropriate line numbers. Then, insert in lieu thereof the desired text, which must be set forth following the instructional language and must be shown using the underline font attribute.

Example:

AMEND House Bill No. 123 by deleting lines 6 through 8 in their entirety and inserting in lieu thereof the following:

“A person sentenced to two years or more under the Truth in Sentencing laws who is confined to any correctional facility administered by the Department may submit an application for review by the Board of Parole for the modification of his or her sentence.”.

Also use this technique for a large amount of text to be deleted from or inserted into an existing Code provision. Remember to apply the correct font attribute to the amendatory text.

While this technique is useful when piecemeal deletion or insertion of text would be cumbersome, exercise caution, as deleting too little or too much text (by reference to the line numbers) can result in problems with integrating the inserted text into the bill.

- (11) **Striking other amendments.** To undo all of the changes made by a previous amendment, use instructional language (and instructional language alone) to strike an amendment in its entirety. This process was discussed, and sample instructional language was provided, in Part III, Section 4 (Amendments). This language is repeated here for convenience.

Example of an Amendment Striking an Entire Amendment:

AMEND House Bill No. 504, as amended, by striking House Amendment No. 2 in its entirety.

Example of an Amendment Striking an Amendment by Line Numbers:

AMEND Senate Bill No. 606, as amended, by striking lines 1 to 23 of House Amendment No. 4 in their entirety.

- (12) **Amending the enactment clause.**

It may be necessary to amend an enactment clause to include a supermajority vote parenthetical. To do so, instructional language is used to place the supermajority vote parenthetical after “DELAWARE” and before the colon.

Example of an Amendment to the Enactment Clause:

AMEND Senate Bill No. 164 by inserting in the enactment clause after “DELAWARE” and before the colon the following: “(Three-fifths of all members elected to each house thereof concurring therein)”.

It may be necessary to amend an enactment clause to remove a supermajority vote parenthetical. To do so, instructional language is used to remove the supermajority vote parenthetical after “DELAWARE” and before the colon.

Example of an Amendment to the Enactment Clause:

AMEND Senate Bill No. 164 by deleting in the enactment clause after “DELAWARE” and before the colon the following: “(Three-fifths of all members elected to each house thereof concurring therein)”.

(13) Adding whereas clauses to a bill introduced without them.

It may be necessary to amend a bill introduced without whereas clauses in order to include whereas clauses. To do so, instructional language is used to remove the enactment clause and insert the necessary whereas clauses followed by a new enactment clause.

Example of an Amendment to Add Whereas Clauses:

AMEND Senate Bill No. 164 by deleting the enactment clause and inserting before “Section 1.” on line 1 the following:

“WHEREAS, small dogs are the best dogs of all; and
WHEREAS, small dogs should be honored with their own provision in
the Delaware Code.
NOW, THEREFORE:
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE
OF DELAWARE:”.

(c) **An amendment to an amendment.** An amendment to an amendment (called an amendment of the second degree) is used to make a change to an amendment that has been introduced. The House Rules specifically mention the use of an amendment to an amendment;⁹¹ however, the Senate rules make no mention of an amendment to an amendment. Additionally, history indicates that amendments to an amendment are more likely to occur in the House rather than the Senate. This is likely because the House allows voice votes on amendments and amendments to amendments and the Senate does not.

When drafting an amendment to an amendment, all of the requirements for drafting an amendment listed in subsection (a) of this chapter apply. A drafter should also:

- (1) Include in the instructional language that the amendment to the amendment is amending the amendment.

Example:

AMEND House Amendment No. 1. to House Bill No. 504 on line 2 by deleting “and” and inserting in lieu thereof “or”.

- (2) Carefully consider how the amendment to the amendment will impact the bill, to ensure proper integration by the engrosser.

An example of an amendment to an amendment is provided in Appendix A-5.

⁹¹ House Rule 23(g). House Rule 40(a)(11) prohibits an amendment to an amendment to an amendment.

(d) **An amendment to a bill, as amended.** If a bill has been amended it is known as “a bill, as amended.” To prepare an amendment to a bill, as amended, do the following:

- (1) When drafting the instructional language for an amendment to a bill that has been amended, ensure the instructional language recognizes that the bill has been amended.

Example:

AMEND House Bill No. 606, as amended, on line 31 of House Bill No. 606. . .

- (2) Carefully consider whether the amendment to be made is to the original bill or an attached amendment to the bill made by the other Chamber, as it determines how the instructional language for an amendment should be drafted. Amend the original bill when the amendment to the bill has not impacted the language in the original bill that needs to be amended. Amend the amendment to the bill when the amendment to the bill has impacted the language in the original bill that needs to be amended; in this case an amendment to the original bill is not possible because the line numbers of that portion of the original bill technically are no longer accurate and the language is likely not accurate.

Example of Instructional Language for an Amendment to the Original Bill:

AMEND House Bill No. 504, as amended, after line 78 and before line 79 of House Bill No. 504 by inserting the following:

Example of Instructional Language for an Amendment to the Amendment to Original Bill Made by the Other Chamber:

AMEND House Bill No. 504, as amended, by deleting lines 8 and 9 of House Amendment No. 1 to House Bill No. 504 in its entirety and inserting in lieu thereof the following:

- (3) Be alert for amendments which have been introduced but not yet considered by the Chamber. If possible, the drafter’s proposed amendment should be drafted to avoid a conflict with an already introduced amendment. “Conflict” means in a technical way, not in a substantive way. From a purely technical perspective, the goal is that all known amendments can become part of the bill without interference from each other.

An example of an amendment to a bill, as amended, is provided in Appendix A-6.

PART VI: FORMATTING, STYLE, GRAMMAR, AND OTHER PRINCIPLES OF GOOD LEGISLATIVE DRAFTING.

In 1955, Reed Dickerson pointed out that “legislative drafting is the most difficult form of legal drafting. The basic problems are the same but legislative problems are technically more complicated and socially more important.”⁹²

The principal functions of legislation are: (1) to *create* or *establish*; (2) to *impose* a duty or obligation; (3) to *confer* a power, *create* a right, or *grant* a privilege; and (4) to *prohibit* conduct. The clarity and precision of legislation is enhanced by plain and orderly expression of these functions. This is the focus of this manual, to improve the accuracy, clarity, and uniformity of the General Assembly’s legislative product. No place does that focus become clearer than in the formatting, style, and grammar used in the creation of legislation. Adherence to the principles in this manual will ensure legislation mirrors the format, style, and grammar of the Code and will, in turn, create for this State a code of laws that its citizen can understand.

Chapter 1: Formatting Rules.

In drafting legislation, “formatting” is used to describe the layout of the legislation or Code. All legislation, particularly bills, should be drafted to reflect the formatting found in the Code. This promotes uniformity with the Code and between pending legislation, accuracy in the process of amending or codifying legislation, and readability.

The following rules are intended to serve as a guide to proper formatting.

Rule 1. Use of Microsoft Word.

The DELIS computer drafting system functions in conjunction with Microsoft Word. All legislation should be drafted using Microsoft Word to ensure access to the formatting features discussed in this chapter. Additionally, using Word enables the transfer of drafts prepared outside of Legislative Hall into DELIS.

Rule 2. Track Changes Function.

Do not draft legislation using track changes or any similar function in Microsoft Word.

A note for drafters outside of Legislative Hall: **do not send draft legislation to a legislator or legislative staffer if the draft has been composed using track changes**, as these documents cannot be directly entered into DELIS without causing significant issues.

⁹² R.J. Martineau, *Drafting Legislation and Rules in Plain English*, 11 & n.13 (1991) (quoting Dickerson, *How to Write a Law*, 31 *Notre Dame Lawyer* 14, 15 (1955)).

Rule 3. Fonts.

All legislation must be drafted using the Times New Roman font style in 10 point.

Do not add font styles to the text of any legislative vehicle. This includes **bolding** or *italics*. Further, do not use all capital letters for emphasis. Capitalization must be used only in conformity with the rules for capitalization. See Chapter 2, Drafting Rule 18.

Use only black text color.

Rule 4. Paragraphing and Spacing.

“Paragraphing” means the alignment, indentation, and spacing of the body of the legislation. Paragraphing in legislation should be set as follows, using the “Paragraph” dialog box in Microsoft Word:

- | | |
|------------------|--|
| (1) Alignment: | Justified |
| (2) Indentation: | Left, 0” |
| | Right, 0” |
| | Special Indentation Rule: First line by 0.5” |
| (3) Spacing: | Before, 0 pt |
| | After, 0 pt |
| | Line Spacing: Double |

For drafters within Legislative Hall, these paragraphing rules are the default settings within DELIS. These settings must be applied to legislation drafted outside DELIS before importing it into DELIS. Again, these rules apply to the body of the legislation. The synopsis conforms to these settings, except it is single spaced.

Additional spacing rules are as follows:

- (1) One space after the period at the end of a sentence and before the start of a new sentence.⁹³
- (2) One space after a comma, a colon, or a semicolon.
- (3) One space after a period or parentheses when those punctuation marks are used in the hierarchy of a statute (as discussed in Formatting Rule 5).
- (4) One space after the section symbol (§) and before the section number.

Review the draft to ensure that there are not blank line numbers at the end of the legislation or extra pages with no text. This saves time and printing costs.

⁹³ Typographers have universally agreed that one should use one space after a period. Typewriters, with their use of monospaced type, required the use of two spaces after a period to aid in spotting the space between sentences. The return to proportional typesetting of today’s fonts, with the exception of Courier, means that adding two spaces after a period no longer enhances readability. See Farhad Manjoo, *Space Invaders: Why you should never, ever use two spaces after a period*, Slate, at http://www.slate.com/articles/technology/technology/2011/01/space_invaders.html (last visited Aug. 25, 2014).

Rule 5. Hierarchy and Indentation.

The internal hierarchy of legislation amending the Delaware Code should be consistent with the internal hierarchy of the Delaware Code, which is as follows:

For a Code section with a designated first subsection:

- § 101.
- (a)
- (1)
- a.
- 1.
- A.
- I.
- (A)
- (I)

For a Code section with an undesignated first subsection, typically a section with introductory language such as that found in a definition section:

- § 101.
- [Introductory language]
- (1)
- a.
- 1.
- A.
- I.
- (A)
- (I)

Both examples are shown indented following the format that all drafters should use, which is applied using the Paragraph function in Microsoft Word as follows:

- § 101. [Indentation, Left, 0"; Special, First line By 0.5"]
- (a) [Indentation, Left, 0"; Special, First line By 0.5"]
- (1) [Indentation, Left, 0.25"; Special, First line By 0.5"]
- a. [Indentation, Left, 0.50"; Special, First line By 0.5"]
- 1. [Indentation, Left, 0.75"; Special, First line By 0.5"]
- A. [Indentation, Left, 1"; Special, First line By 0.5"]
- I. [Indentation, Left, 1.25"; Special, First line By 0.5"]
- (A) [Indentation, Left, 1.50"; Special, First line By 0.5"]
- (I) [Indentation, Left, 1.75"; Special, First line By 0.5"]

Do not use auto numbering or auto lettering; draft the internal hierarchy manually.

Rule 6. Auto Numbering/Auto Lettering of Text.

Draft legislation without auto numbering or auto lettering of the text. The default setting in DELIS is to suppress this automatic function. Outside drafters can turn off this feature in their Word document by using the following instructions:

- (1) Go to the “File” tab.
- (2) Click “Options”.
- (3) Click “Proofing”.
- (4) Click the “Auto Correct Options” button.
- (5) Click the “Auto Format” tab.
- (6) Remove the check from “Automatic bulleted lists” box.
- (7) Click the “Auto Format As You Type” tab.
- (8) Remove check from the “Automatic bulleted lists” and “Automatic numbered list” boxes and click “OK”.

Rule 7. Line Numbers, Page Numbers, Tables, and Section Breaks.

When opening a new Word Document in DELIS, line numbers, page numbers, tables, and section breaks are automatically created. Take care to ensure that these automatic features are not altered, as these features serve important functions for the working of DELIS.

Line numbers appear on the left hand side of the document and page numbers at the bottom. Section breaks are invisible unless the “Show Paragraph Markings” function is turned on by clicking the following button in the “Paragraph” section of the “Home” tab:



Rule 8. Placement of Language Creating a New Bill Section or Identifying a Code Section.

When language creating a new bill Section or identifying a Code section would begin at the bottom of one page and the substantive portion of the bill Section or Code section would begin at the top of another page, insert a page break to keep the language together.

Examples of what to avoid:

Example 1:

12 (h) Notwithstanding subsections (a) and (b) of this section, any person who meets the criteria specified in § 4177C of
13 this title may be permitted to apply for the ignition interlock device [IID] to be installed on a vehicle to be driven by the
14 applicant and may be issued an IID license upon meeting the requirements specified in § 4177C of this title. Any time
15 period during which a person holds a valid ignition interlock license pursuant to this section shall reduce, on a day for day
16 basis, any other period of mandatory ignition interlock use arising from the same incident.

17 Section 2. Amend Subchapter IX, Chapter 41, Title 21 of the Delaware Code by making deletions as shown by strike
18 through and insertions as shown by underline as follows:

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Example 2:

15 applicant and may be issued an IID license upon meeting the requirements specified in § 4177C of this title. Any time
16 period during which a person holds a valid ignition interlock license pursuant to this section shall reduce, on a day for day
17 basis, any other period of mandatory ignition interlock use arising from the same incident.

18 § 4177. Driving a vehicle while under the influence or with a prohibited alcohol or drug content; evidence; arrests; and
19 penalties.

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Chapter 2: Drafting Rules.

The Drafting Rules set forth the conventions for style and grammar in drafting legislation. The purpose of the rules is to promote accuracy, clarity, and uniformity, with the goal being the best possible legislative product that is in harmony with the existing Code. This goal is important, as laws should be written with the understanding of their place within the existing Code and with an eye toward the future of the Code. This can be accomplished if drafters adhere to these conventions.

Legislative drafting is an art, not a science. While these rules should be followed to the extent possible given the task at hand, there are occasions when the complexity of the legislation or its uniformity with other laws in the Delaware Code, or outside the Code in cases of a Uniform Law, requires a drafter to deviate from these rules. A drafter should not deviate from these rules, however, absent a conscious decision and a sound reason for that decision.

These rules are not intended to be an exhaustive list of guidelines to good legislative drafting. To the extent that questions remain on topics such as spelling, compounding, punctuation, capitalization, abbreviations, signs and symbols, and numerals, augment these rules by reference to outside sources. For general style questions outside the scope of this Manual, consult a style guide. The editors of this Manual recommend Strunk and White's *The Elements of Style*. For generally accepted meanings and standard usage of words, consult a reputable dictionary. The editors recommend the latest edition of *Webster's Collegiate Dictionary* and *Webster's Third New International Dictionary*. Additionally, the staff of the Division of Research is always available for assistance.

Rule 1. Clarity and Readability.

- (a) The purpose and effect of legislation should be evident from its language.
- (b) Choose words that are plain and commonly understood.
- (c) Use language that conveys the intended meaning to every reader.
- (d) Omit unnecessary words.
- (e) Use correct grammar.
- (f) Use references, citations, lists, formulas, and tables to promote clarity and readability.

Comment

Clarity and readability are the hallmark of good legislative drafting. From this rule all others naturally flow. If legislation is not clear and readable, it is less likely to be read or supported, frustrating a client's efforts to pass legislation as much as an incorrect vote count or a parliamentary maneuver by the opposition.

Rule 2. Brevity and Simplicity.

- (a) Use the shortest sentence that conveys the intended meaning.
- (b) Omit needless language.
- (c) If a word has the same meaning as a phrase, use the word. See the “Use Plain English” table in Chapter 3, Section 2 of this part regarding General Guidelines for Drafting.
- (d) Avoid archaic words or legalese.

Comment

In construing legislation, courts consider each word and endeavor to give it meaning. Unnecessary language is more likely to mislead than to help.

It is traditional that statutes are unreadable, indefinite, confusing, and misleading. The very length of sentences and sections contributes to this result. The traditional belief that statutes must couch simple ideas capable of direct statement in pompous and verbose language adds greatly to confusion. The phrases “hereinafter referred to,” “the said” and “the aforesaid,” “unless otherwise provided by law,” and similar expressions add little to understanding, usually are meaningless, and are never necessary.⁹⁴

Rule 3. Consistency.

Unlike literary composition, legislative style should avoid variation in sentence form and should use identical words for the expression of identical ideas to the point of monotony.⁹⁵

- (a) Be consistent in the use of language throughout the legislation. Do not use the same word or phrase to convey different meanings. Do not use different language to convey the same meaning.⁹⁶
- (b) Be consistent in the arrangement of comparable provisions; arrange in the same way as sections containing similar material.
- (c) When a choice must be made between following the rules of drafting and maintaining consistency with earlier statutes, or between rewriting an entire section or chapter or amending a section or chapter by adding an awkward sentence, consult with the client about such an issue.

⁹⁴ 1A Singer, *Sutherland Statutory Construction*. § 21:5 (7th ed. 2012).

⁹⁵ *Id.*

⁹⁶ See also Drafting Rule 5.

Comment

Consistency helps prevent different interpretations of similar provisions. Choose the best word and use it throughout the legislation. Do not switch between different words for the same idea as in: attorney, lawyer, counsel; vehicle, car, automobile; ship, boat, vessel. Do not use “weapon” if you mean “firearm”; do not use “firearm” if you mean “handgun”. **Embrace monotony.**

Rule 4. Sentence Structure.

*In the 16th Century, [England’s] King Edward VI requested that statutes be ‘more plain and short, to the intent that men might better understand them.’*⁹⁷

Use short, simple sentences. Complex sentence structure often makes a statute ambiguous or its meaning obscure. A sentence that expresses a single thought is easier for the reader to understand. Avoid excessive use of dependent clauses, parallel clauses, compound sentences, or other complex sentence structures. Several short, simple sentences are preferable to one long, involved sentence. Try to keep sentences in legislation to under 21 words.

Comment

Grammar, in its simplest sense, is a collection of rules imposed by each language to ensure, to as great an extent as possible, a complete understanding of what is written or spoken. In contrast, grammar, when used in drafting legislation, is a collection of rules developed to substantially decrease any confusion or ambiguity as to the meaning of a statute. Generally, the ordinary rules of grammar apply to legislative drafting, except that in a few instances, as discussed in these rules, a departure from common usage is desirable.

Rule 5. Subject of Sentence.

Unless it is clear from the context, use as the subject of each sentence the actor (the person or entity) to whom a power, right, or privilege is granted or upon whom a duty, obligation, or prohibition is imposed. Again, be consistent. If you use “person”, do not switch to “individual”, “party”, or “body”.

Example:

“In the U.S.C.A., a person seeking a writ of habeas corpus is referred to as a ‘prisoner’, a ‘person in custody’, a ‘person detained’, a ‘petitioner’, and an ‘applicant.’ Only confusion can be created by the use of five different terms to refer to the person seeking the writ.” R.J. Martineau at page 69.

⁹⁷ R.J. Martineau, *Drafting Legislation and Rules in Plain English*, 2 (1991) (quoting *The Preparation of Legislation*, ¶ 2.8, Command Document 6053 (1975)).

Rule 6. Tense, Voice, Number, and Mood.

- (a) Use the present tense, for the law speaks when it is read.

Say: An officer may arrest a criminal who is wanted by the FBI.

- (b) Use the active voice instead of the passive voice, unless the actor cannot be identified or the statement is intended to be universal. See the Comment for an explanation of active and passive voice.

Do Not Say: A criminal who is wanted by the FBI may be arrested by an officer.

- (c) Prefer the singular to the plural. A statute is intended to speak to each person who is subject to it and should be drafted that way. The singular form is not limiting, as § 304(a) of Title 1 makes it clear that “[w]ords used in the singular include the plural” Therefore, do not use the singular and plural of the same word joined by “or” or make a singular word plural by adding “(s)” or “(es)”.

Say: The applicant shall submit the required fee.

Do Not Say: The applicant or applicants shall submit the required fee.

Do Not Say: The applicant(s) shall submit the required fee.

Additionally, the singular is clearer than the plural.

Do Not Say: Reversionary interests are subject to limitations in the documents that create the interests.

Say: A reversionary interest is subject to a limitation in the document that creates the interest.

(d) Draft in the indicative mood whenever possible. The English language has three moods. The indicative mood expresses a fact or declaration. The imperative mood expresses a command. The subjunctive mood expresses a hypothetical situation or contingency.

Relatedly, a drafter should seek to avoid “false imperatives”, which are expressions that seem to direct behavior but do not. These expressions often include the use of “shall” or “shall not”, which are used to declare a legal result rather than to prescribe a rule of conduct as in the example below.

Do Not Say: The Authority shall be a Delaware corporation.

Say: The Authority is a Delaware corporation.

By avoiding false imperatives like the one above, the drafter ensures that “shall” is used only to command (as a duty). This avoids the weakening of “shall” through interpretation by the courts.⁹⁸

(e) State a condition precedent in the perfect tense if its happening is required to be completed.

Example: A person who has been honorably discharged from the military service is eligible for the benefit.

Comment

A statute is regarded as speaking in the present and constantly. The use of “shall” in imposing a duty or prohibition does not violate this convention as it does not indicate the future tense. Even if an action is required on a specified future date, the form of expression is not in the future tense.

In speaking in the present, a circumstance putting a provision of legislation in operation, if continuing to exist, is in the present tense.

Example: A victim who is injured may bring an action.

If the triggering circumstance is completed, it is expressed in the perfect tense, but never in the future or future perfect.

Example: If the issue has been litigated, the claimant is not eligible for the program.

⁹⁸ See Drafting Rule 11.

Active v. Passive Voice

In the active voice, the subject of the sentence does the action. A sentence in the active voice can be identified by the typical doer of the action, action, receiver of the action structure of the sentence.

Example: The committee reached a decision.

In the passive voice, the subject receives the action. A sentence in the passive voice reverses the structure of the sentence so that the receiver of the action is first, then the action itself, then the doer of the action usually preceded by the words “by” or “by the”.

Example: A decision was reached by the committee.

As indicated by the rule, a drafter should use the active voice instead of the passive voice. Using the active voice identifies more clearly who is to do what. Avoiding vagueness as to the required actor is especially important when the sentence grants a power or a privilege or imposes a duty.

There may be times, however, when drafting legislation that using the passive voice is appropriate. For example, penalty provisions are often drafted in the passive voice. And, it may be appropriate to use the passive voice in a later sentence or provision if the actor and the action have already been identified.

Examples:

1. Penalty provision.

Whoever violates this section shall be subject to a fine of not less than \$1,000 nor more than \$5,000, or to a period of imprisonment of up to 1 year, or both.

2. Where actor and action identified.

(a) A person who receives a grant under this section shall submit a report to the Secretary.

(f) The report submitted under subsection (a) is due by March 1 each year.

Rule 7. Gender.

Avoid using gender-based personal pronouns and using “they” in place of gender-based personal pronouns.

Comment

Consider drafting the sentence so as to minimize the need for gender-based pronouns. A drafter can avoid these pronouns by repeating the noun. Do not use the phrase “he or she”, “his or her”, or “his/her”. However, “himself or herself” is acceptable for the sake of clarity. The passive voice may be used if the actor remains clear.

This rule is supported by § 211(c) of Title 1, which directs the Code Revisors to “gender neutralize or otherwise insure that a solely masculine or feminine designation never occurs unless it could only apply to one gender.”

Guide to Gender-Neutralizing Statutory Terms

| Gender-Based Term | Gender-Neutral Term |
|-------------------|---|
| brother | sibling |
| chairman | chair |
| clergyman | member of the clergy, minister |
| craftsman | artisan, craftsperson |
| committeemen | committee members |
| draftsman | drafter |
| enlisted man | enlisted person |
| ex servicemen | veterans |
| fireman | fire fighter |
| husband | spouse |
| layman | layperson |
| mailman | mail carrier |
| man | individual |
| mankind | humanity |
| manmade | artificial, synthetic |
| manned | staffed |
| manpower | personnel |
| policeman | police officer, law enforcement officer |
| salesman | salesperson |
| servicemen | military personnel |
| sister | sibling |
| unmanned | unstaffed |
| watchman | guard, security person |
| widow, widower | surviving spouse |
| wife | spouse |
| woman | individual |

Rule 8. People First Language.

Section 608 of Title 29 requires drafters to construct statutes using language that emphasizes that individuals are people first and that their disabilities or conditions are secondary.

| Terms and Phrases to Avoid | Terms and Phrases to Use Instead |
|--|--|
| disabled person | individual with a disability |
| developmentally disabled person | individual with a developmental disability |
| mentally ill person | individual with a mental illness |
| mentally disabled person, mentally retarded person | individual with a cognitive disability |
| autistic person | individual with autism |

Rule 8A. Referencing Delaware Governmental Bodies in Delaware Law.

References in Delaware law to Delaware governmental bodies, such as state agencies, do not require the use of “Delaware” prior to the name of the state agency. It is understood that, unless otherwise noted, references to these governmental bodies mean the Delaware body.

Do Not Say: The Delaware Department of Transportation shall

Say: The Department of Transportation shall

References in Delaware law to a governmental body outside of Delaware do require use of the governmental body’s affiliation to make clear that a reference to a governmental body outside of this State is intended.

References in Delaware law to a Delaware governmental body must be to the body’s proper name, not an acronym for the body, unless the acronym has been defined. See Drafting Rule 17 of this chapter.

Do Not Say: DelDOT shall

Say: The Department of Transportation shall

Rule 9. Choice of Words and Phrases.

(a) Select short, familiar words and phrases that best express the intended meaning of the legislation according to common and approved usage. Avoid jargon, slang, overly technical language, legalese, and foreign phrases (including Latin legal terms) unless the word or phrase is a term of art or is often used in case law.

Example:

1. Use “after” instead of “subsequent to;”
2. Use “before” instead of “prior to;”
3. Use “during” instead of “for the duration of.”

(b) Do not use both a word and its synonym; for example, “null and void”, “power and authority”, “sole and exclusive”. Avoid these redundant couplets. See the “Avoiding Redundant Couplets” table in Chapter 3, Section 2 of this part (General Guidelines for Drafting).

(c) Use a pronoun only if its antecedent is unmistakable and its use is gender neutral. Repeat the noun rather than use a pronoun unless the antecedent is a series of nouns. If the sentence structure is so complex that a possessive pronoun seems necessary, consider redrafting the sentence rather than using a possessive pronoun.

(d) Do not use “pursuant to”, “said”, “aforesaid”, “above”, “below”, “hereinbefore”, “herein”, “hereinafter”, “aforementioned”, “whatsoever”, or similar words of reference or emphasis. Instead, refer to the relevant statutory or nonstatutory unit with language like “by” or “under” as discussed in subsections (e) and (f).

Example: . . . *under* subsection (b) of this section.

(e) If the result being sought is to be achieved through the operation of that provision itself without the necessity of an administrator taking a particular action, use “by”.

Example: . . . the reduction required *by* this section.

(f) If a provision of law is cited to indicate the source of a power, right, or duty, use “under”.

Example: A lessor’s right to restitution *under* subsection (a) is subject to

- (g) Do not use “same” as a pronoun; use “it” instead.

Do Not Say: I have received your notice and acknowledge *same*.

Say: I have received your notice and acknowledge *it*.

- (h) Do not use the modifiers “any”, “each”, “every”, “all”, or “some” if the articles “a”, “an”, or “the” can be used with the same result.

Example:

Each owner attending the meeting shall sign a registration card.

In this example, “each” should be used only if the failure of an owner to attend the meeting has a legal consequence other than to an individual owner, such as the validity of the meeting. If the only legal consequence is to the owners as individuals, “an” should be used.

- (i) Do not use “any and all” because the phrase is self-contradictory.
- (j) Do not use “deem” for “consider”. Use “deem” only to state that something is to be treated as true, even if contrary to fact.
- (k) Do not use “duly”. The word adds nothing to text that is designed to have a legal effect. It may, however, be appropriately used in resolutions, where more eloquent language is permissible.
- (l) Avoid rhetorical flourishes such as “of any kind”, “of any nature”, or “under any circumstances”. You may, however, use them in resolutions expressing praise or condolences.
- (m) Try to avoid indefinite words such as “frequently”, “untimely”, “unseasonable”, or “temporarily”, except in resolutions. Instead, use precise references.
- (n) Do not use “different than”. Instead, use “different from”.
- (o) In a section without subsections, and in each subsection of a section, use the indefinite article “a” or “an” to impart particularity or specificity to the first mention of a noun indicative of a member of a class or group. Use the definite article “the” for further references to that noun. If the noun is compound, even if defined, use the complete term in the first mention of the term. In later references to that term in a section, subsection, or paragraph, use only the principal noun of the term.

Example: A *qualified patient* may make decisions regarding life-sustaining treatment so long as *the patient* is able to do so.

Rule 10. Use of “And”, “Or”, and “And/Or”.

- (a) Use “and” when you mean “in addition to” and want to connote togetherness.
- (b) Use “or” when you mean “as an alternative to” and the reader must not choose more than one of the two listed alternatives.
- (c) **Do not ever use “and/or”.** Decide whether “and” or “or” is appropriate and use the proper word, or recast the statement like a penalty provision using the phrasing “A” or “B”, or both. If there are three or more options, consider rephrasing the text preceding the options to include the language “one or more of the following:”.

Comment

“And” and “or” are conjunctions. Conjunctions join words, phrases, or clauses, and they indicate the relation between the elements joined. “And” is conjunctive and means in addition to and connotes togetherness. “Or” is disjunctive and means as an alternative to and tells the reader to “take your pick”. The drafter should recognize that these words can have different senses depending on the surrounding context and draft to ensure the context fits the desired use of the word.

“And,” based on context, can mean:

- (1) **Joint.** In this sense, “A” and “B” are considered together as one unit.
- (2) **Several.** In this sense, “A” and “B” are considered separately.
- (3) **Joint or several.** In this sense, “A” and “B” are considered together as one unit or separately.
- (4) **Joint and several.** In this sense, “A” and “B” are considered together as one unit and separately.

“Or”, based on context, can mean:

- (1) **Inclusive.** In this sense, “or” tells the reader “A” but not “B”, “B” but not “A”, or both “A” and “B”. This is the sense in which drafters often use “and/or”.
- (2) **Exclusive.** In this sense, “or” tells the reader “A” but not “B,” “B” but not “A”, but not “A” and “B”.

Courts have called “and/or” a “meaningless symbol”, a “verbal monstrosity”, and an “abominable invention”.⁹⁹ The Supreme Court of Kentucky called it a “much condemned conjunctive-disjunctive crutch of sloppy thinkers.”¹⁰⁰ The Supreme Court of Wisconsin has had even more unkind words for it, calling it:

[T]hat befuddling, nameless thing, that Janus-faced verbal monstrosity, neither word nor phrase, the child of a brain of someone too lazy or too dull to express his precise meaning, or too dull to know what he did mean, now commonly used by lawyers in drafting legal documents, through carelessness or ignorance or as a cunning device to conceal rather than express meaning with view to furthering the interest of their clients.¹⁰¹

While Delaware Courts have been kinder, they have been no less forgiving. The Court of Chancery has stated that “[t]he use of the words ‘and/or’ is forbidden to a careful draftsman and is always to be avoided by a drafter of statutes.”¹⁰² The Supreme Court has, in the context of a criminal indictment, held that the use of “and/or” to join criminal offenses in an indictment is “a very problematic method of charging . . . and is unwise and should be avoided.”¹⁰³

Bryan Garner, editor-in-chief of *Black’s Law Dictionary* and a noted author on legal writing, in making his case that he has never needed it and urging drafters to “Kill it” has said:

If a sign says “No food or drink allowed,” nobody would argue that it's OK to have both. (*Or* includes *and*.) And if a sign says “No admission for lawyers and law students,” would you argue that either could go in alone? You'd be thrown out of court.

The real problem with *and/or* is that it plays into the hands of a bad-faith reader. Which one is favorable? *And* or *or*? The bad-faith reader can pick whatever reading seems favorable.¹⁰⁴

⁹⁹ See *Librach v. Litzinger*, 401 S.W.2d 433, 437 (Mo. 1966); *Retro Television Network, Inc. v. Luken Commc'ns, LLC*, 2012 WL 28689, at *4 n. 7 (E.D. Ark. 2012); *R&R Marine, Inc. v. Max Access, Inc.*, 377 S.W.3d 780, 785 n. 5 (Tex. App. 2012).

¹⁰⁰ *Raine v. Drasin*, 621 S.W.2d 895, 904 (Ky. 1981).

¹⁰¹ *Employers' Mut. Liab. Ins. Co. of Wisconsin v. Tollefsen*, 263 N.W. 376, 377 (Wis. 1935).

¹⁰² *State ex. rel. State Bd. of Exam'rs in Optometry*, 372 A.2d 214, 217 (Del. Ch. 1977).

¹⁰³ *Brown v. State*, 729 A.2d 259, 266 (Del. 1999) (citing *State v. Baker*, 679 A.2d 1002, 1006 n. 2 (Del. Super. 1996)).

¹⁰⁴ Bryan Garner, *Bryan Garner On Words, Ax these terms from your legal writing*, ABA Journal (April 2014), available at <http://goo.gl/LuKvZk> (last visited August 27, 2014).

Rule 11. Use of “Shall”, “Must”, “May”, and Substitutes.

(a) “Shall” means that a person has a duty. Consider the following when using “shall”:

- (1) Use “shall” if the verb it qualifies is a transitive verb in the active voice and the subject is animate.
- (2) A transitive verb is a verb that takes, or precedes, a direct object. In sentences in the active voice, a direct object is the part of the sentence receiving the transitive verb’s action. For a discussion of the active voice, see Drafting Rule 6.
- (3) A subject is animate when it can respond to a statutory command. For example, an individual, a corporation, and a court are animate.

Example of the proper use of “shall”:

The court shall enforce the collection of a tax judgment.

(b) “Must” means that a person or thing is required to meet a condition for a consequence to apply. “Must” does not mean that a person has a duty. Consider the following when using “must”:

- (1) Use “must” if the verb it qualifies is an active verb in the passive voice, or is an inactive verb, or if the subject is inanimate.
- (2) An active verb expresses meaning more emphatically and vigorously than its weaker counterpart, an inactive verb. Furthermore, an active verb is “in the passive voice” when it is preceded by a form of the verb “be”, examples of which include “is”, “was”, “has been”, “had been”, and “will have been”.
- (3) An inactive verb is one that expresses no action, but simply expresses a state of being. Inactive verbs are also known as “linking verbs”. Some of the most common inactive verbs are: “is”, “are”, “was”, “were”, “am”, “be”, “being”, “been”, “became”, “become”, “remains”, “appears”, or “seems”.
- (4) A subject is inanimate when it cannot respond to a command. For example, a contract, a record, and an order are inanimate.

Examples of the proper use of “must”:

1. Active Verb in the Passive Voice.

Any prior convictions *must be set forth* in the application.

2. Inactive Verb.

The applicant *must be* an adult.

3. Inanimate Subject.

The order *must* state the time and place of the hearing.

- (c) Use “may” to confer a power, privilege, or right.

Example:

1. Power.

The applicant *may* demand an extension of time.

2. Privilege.

The applicant *may* renew the application.

3. Right.

The applicant *may* appeal the decision.

- (d) Do not use “shall” or “may” to state a rule of law. Instead, rewrite the sentence using the present tense.

Do Not Say: All agents shall be bound by the decision of the Director.

Say: All agents are bound by the decision of the Director.

- (e) Do not use “will”, “should”, or “ought” as a substitute for “shall” or “must” and do not use “can” as a substitute for “may”.

Note: “Should” is properly used in legislative drafting to state a duty to take an action or to have knowledge.

Example: If payment is due and demanded on the delivery to the buyer of the goods, the seller may reclaim the goods delivered upon a demand made within a reasonable time after the seller discovers or should have discovered that payment was not made.

Comment

The definitions of “shall” and “must” provided in this rule are derived from 2-4-401(6.5) and (13.7) of the Colorado Revised Statutes. These definitions were recently adopted by the Colorado General Assembly “in order to clarify the General Assembly’s use of [these] authority verbs” as “it is useful to use different words to distinguish between . . . the imposition of a duty on a person . . . and . . . the creation of a condition to which a person or thing is subject but as to which there is no duty to act.”¹⁰⁵ While the Colorado act created standard definitions for “must” and “shall”, it intended that “the determination of the proper meanings to be attributed to [these words] should include consideration of the context in which [these] words were enacted and are used.”¹⁰⁶ The Colorado General Assembly’s attempt to clarify the appropriate usage of “must” and “shall” offers a reasonable solution to the issues presented by these words.¹⁰⁷ Going forward, use “must” and “shall” in conformity with this rule.

The editor of this manual agrees with the findings of the Colorado General Assembly and argues that like “and” and “or”, “shall”, “must”, and “may” have multiple senses impacted by the context that surrounds them in a sentence. Therefore, it is imperative that a drafter treat these words with care and use them only as outlined in this rule. Otherwise, a court called upon to interpret a provision can find these words have a meaning different from what a drafter intended, undermining these words in other portions of the Code and frustrating legislative intent.

One example of this situation is a “false imperative” discussed in Drafting Rule 6(d). Another example is an “expression of intent”. Expressions of intent make it unclear whether the statement is a command or an encouragement. Save expressions of intent for declaration of purpose sections.

Do Not Say: The legislature intends that the Department shall

Say: The Department shall [or may]

¹⁰⁵ H.B. 13-1029, 69th Gen. Assem., Reg. Sess. (Colo. 2013). See also Jerry Payne, *Shall we? We must!*, Colorado LegiSource (Jan. 2, 2014), <https://legisource.net/2014/01/02/shall-we-we-must/>.

¹⁰⁶ *Id.*

¹⁰⁷ Compare Bryan Garner, *Bryan Garner On Words, Ax these terms from your legal writing*, ABA Journal (April 2014), available at <http://goo.gl/LuKvZk> (last visited August 27, 2014) (Mr. Garner advocates that drafters should abandon the use of “shall” entirely.).

Rule 12. Use of “Shall Not”, “May Not”, and “Must Not”.

(a) Use “may not” or “must not” to express a prohibition.

(1) Use “may not” if the verb it qualifies is in the active voice¹⁰⁸.

Example: The applicant *may not* **submit** more than one application.

(2) Use “must not” if the verb it qualifies is an inactive verb¹⁰⁹ or an active verb in the passive voice.¹¹⁰

Example:

1. Inactive Verb.

The applicant *must not* **be** a convicted felon.

2. Active Verb in the Passive Voice.

The application *must not* **be filed** before the end of the reporting period.

(b) Do not use “shall not” in legislative drafting.

Comment

When a drafter of legislation or a rule wishes to prohibit an action, the most common method is to combine the mandatory “*shall*” with the negative ‘*not*’ and say the actor “*shall not . . .*” (*a person shall not discharge a toxic substance into the air*). This form is incorrect . . . [T]echnically the words “*shall not*” only mean that a person does not have a duty to engage in the action. The use of “*no person shall*” is just as incorrect because the phrase means only that there is no one who has a duty to engage in the action.

The proper way to express a prohibition to act is to say ‘*may not*’ in connection with the action prohibited (*a person may not discharge a toxic substance into the air*). The effect of the words “*may not*” is to deny the actor the power or the authority to engage in the action. The denial of the power or authority accomplishes all that is necessary to establish the legal prohibition against a person performing an act. It also provides the legal basis for imposing a sanction for a violation of the prohibition.¹¹¹

¹⁰⁸ See comment section to Rule 6 for a discussion of the active voice.

¹⁰⁹ See Drafting Rule 11(a)(2) for a discussion of inactive verbs.

¹¹⁰ See *id.* for a discussion of active verbs in the passive voice.

¹¹¹ R. J. Martineau, *Drafting Legislation and Rules in Plain English*, 81-82 (1991).

Rule 13. Use of “Which” and “That”.

- (a) Use “which” to introduce a nonrestrictive relative clause.

Example: The application, *which* need not be verified, must be signed by the applicant.

- (b) Use “that” to introduce a restrictive relative clause that is intended to modify the nearer of two possible antecedents.

Example: An application to renew a *license that* has been revoked . . .

- (c) Use “which” to introduce a restrictive relative clause that is intended to modify the remote antecedent, rather than the nearer of two possible antecedents.

Example: An *application* to renew a license, *which* has been rejected . . .

- (d) If the antecedent is not clear, the drafter should consider rewording the sentence to avoid any misconstruction.

Example: If an *application* to renew a license has been rejected, the applicant . . .

Comment

“Which” is nondefining. It prefaces a relative clause that explains or gives a reason, or adds a new fact, but does not limit or restrict the antecedent. It is almost always preceded by a comma. It is used when the relative clause is informative only and the thought would be complete without it. It is used in a series of terms when one of those terms must be stated prepositionally.¹¹²

“That” is defining. It prefaces a relative clause that limits or restricts its antecedent. It is almost never preceded by a comma. It is used when the relative clause is needed to complete the thought being expressed.¹¹³

¹¹² See Lawrence Filson & Sandra Strokoff, *The Legislative Drafter’s Desk Reference*, 277-79 (2nd ed. 2008). See also Mary Norris, *Comma Queen: Whichcraft – That vs. Which*, *The New Yorker*, June 6, 2016, available at <http://www.newyorker.com/culture/culture-desk/comma-queen-whichcraft-that-vs-which> (last visited Nov. 28, 2016).

¹¹³ See Filson, *The Legislative Drafter’s Desk Reference*, 277-79. See also Norris, *Comma Queen: Whichcraft – That vs. Which*.

Rule 13A. Use of “Who” Versus Use of “That” and “Which”.

- (a) Generally, use “who”, “whom”, or “whose” to refer to people.
- (b) Generally, use “that” and “which” to refer to objects or animals.
- (c) There are two notable exceptions:
 - (1) “Whose”, the possessive form of “who”, may be used to refer to both people and objects because the English language lacks a possessive form of “that”. This use of “whose” avoids an awkward sentence constructed using “of which”.

Do Not Say: Look, it is the dog the name of which I have forgotten.

Say: Look, it is the dog whose name I have forgotten.

- (2) “That” may be used instead of “who” to refer to a group or class of people.

Example: The two teams that win the most games will go on to the championship round.

Rule 14. Use of “Such”.

- (a) Do not use “such” as a substitute for “the”, “that”, “it”, “those”, “them”, or other similar words.

Example: *The* [not *such*] application must be in the form the court prescribes.

- (b) Use “such” only to express “for example” or “of that kind”.

Example:

1. “For example”

A public park must include an area for games *such as* football and soccer.

2. “Of that kind”

Such a person is guilty.

Comment

The problem with the use of “such” is that it may be used in both ways described in this rule. Lawyers typically use the word in both ways and this is a source of confusion for the nonlawyer, as the nonlawyer typically only expects it to be used to mean “of that kind”.

There may be situations where it is advisable for a drafter to break this rule and use “such” in place of “the” or similar words. If “the” fails to identify the antecedent unambiguously, for example when the word being referred to has multiple modifiers, “such” should be used for clarity. Additionally, if “that” would be confusing or awkward because the provision contains too many “thats” being used in other senses, “such” should be used.¹¹⁴ However, the drafter should seriously consider if clarity would be better aided by redrafting the sentence to avoid the need to use “such” in this way.

Rule 15. Use of “If”, “When”, “Whenever”, and “Where”.

(a) Use “if” regarding a condition based on the existence or nonexistence of a fact or on the occurrence or nonoccurrence of an event. These conditions may never occur.

Example: An appeal may be made to district court *if* it is filed within thirty days.

(b) Use “when” regarding a condition that is certain to occur.

Example: A court may order opening of the safety deposit box *when* the owner of the box dies.

(c) “Whenever” is appropriate usage if the condition may occur more than once.

Example: *Whenever* an offense is brought to the attention of the Attorney General, the Attorney General shall prosecute the offender.

(d) Do not use “where” as a replacement for “if”, “when”, or “whenever”. It expresses a condition as to place. For the purposes of drafting, “place” may be stretched to allow “where” to be used as a synonym for “in which” in phrases like “in any case in which”.

(e) Do not use “where” when you mean “if”.

¹¹⁴ Filson, *The Legislative Drafter’s Desk Reference* at 288.

Rule 16. Use of “Only” and Other Modifiers.

Ensure that “only” and other modifiers are placed immediately before what is modified. “Only” is misplaced more often than any other modifier and can have dramatic results, as these examples indicate:

Example:

1. The Department may place traffic-control devices **only** at intersections. [“Only” modifies “intersections” and commands the Department to placing traffic-control devices at intersections and not elsewhere.]
2. The Department may place **only** traffic-control devices at intersections. [“Only” modifies “traffic-control devices” and prohibits the Department from placing other items at intersections.]
3. The Department may **only** place traffic-control devices at intersections. [“Only” modifies “place” and limits the Department to placing traffic-control devices as opposed to operating or maintaining them.]

Comment

Modifiers are words, phrases, and clauses that can bring life to a sentence when used appropriately. Modifiers are as important to legislative drafting as to other forms of writing; the need for accurate use increases, however, due to the harm a misplaced modifier can cause in legislation.

Misplaced modifiers occur frequently in writing and are perhaps the main contributor to ambiguity in statutes.

Rule 17. Abbreviations.

Generally, abbreviations should be avoided.

Do Not Say: U.S.

Say: United States

Do Not Say: DOJ

Say: Department of Justice (“Department” is appropriate if the context will support its usage)

Rule 18. Capitalization.

- (a) Generally, capitalize:
 - (1) The first word of a sentence.
 - (2) The first word in a new line indented as a paragraph, regardless of whether it follows a colon, except within the Uniform Commercial Code.
 - (3) The first word after a colon, regardless of whether what follows is a complete sentence.
 - (4) The first word of a quoted sentence, unless the quoted material is incorporated into the sentence that introduces it.
 - (5) Proper nouns or words derived from proper nouns.
 - (6) Calendar divisions or names of holidays.
 - (7) Names of organized bodies.
- (b) Capitalize defined terms only in the definition section unless otherwise required by this rule.

Comment

Code specific capitalization examples are provided in the Chapter 3, Section 3, A of this part.

If questions remain, drafters should consult the *United States Government Printing Office Government Style Manual*, which can be found at <http://goo.gl/JWpPc0>.

Rule 19. Numbers.

- (a) Generally, use the numerical form rather than the word for the number. When a number begins a sentence, however, use the word instead of the numerical form.

Example:

A 2-axle vehicle shall be inspected yearly.

The Attorney General shall assign 1 or more Deputy Attorneys General to prosecute homicides in each county.

Eighteen members constitute a quorum.

- (b) Do not express a number as both its word and numerical form in parentheses.

Do Not Say: After sixty-five (65) years of age, an individual is exempt from all vehicle registration fees.

Say: After 65 years of age, an individual is exempt from all vehicle registration fees.

- (c) Write fractions as numerals.

Do Not Say:

The tax rate increase for 2014 is three-fourths of a percent.

OR

The tax rate increase for 2014 is 3/4ths of a percent.

Say: The tax rate increase for 2014 is 3/4 of a percent.

Say: “17½ years old” not “17 and one half” or “17.5”.

- (d) Write measurements as numerals:

12 inches

400 feet

4,000 pounds

30 miles per hour

20 degrees

- (e) Write money as numerals:

Values over \$999.99 include commas as appropriate: ex. “\$1,000”.

Values under \$10 are written as dollars and cents: ex. “\$3.00”.

Values under \$1.00 are expressed as cents: ex. “50 cents”.

Note: The plural form of money is “moneys”, not “monies”.

- (f) Percentages should generally be expressed as the style of the unit of the Code (title, chapter, section, etc.) dictates. However, when drafting a new unit of the Code or amending an existing unit of the Code with no existing style, the preference is to express percentages by using numerals with the percent symbol (%). For example, write “95%”, not “ninety-five percent”.

- (g) Express dates as numerals for the day and year.

Do Not Say: June 30th, 2014

Say: June 30, 2014

- (h) Express time as numerals in all forms (clock time and when writing hours or minutes), except for midnight or noon, which should be expressed as words.

Do Not Say: eight o’clock at night

Say: 8 p.m.

- (i) When creating a numeric or temporal sequence, use “through” instead of a dash to connect the first and last items in the sequence.¹¹⁵

Example: The license fee for vehicles from 1,001 through 5,000 pounds is \$100.

Note: In sequences connected by “through” the reference intended is that the sequence includes the first and last number mentioned. Thus, in the example, 1,001 is the first, or lowest, weight covered by the fee and 5,000 is last, or highest, weight covered by the fee.

¹¹⁵ The use of “inclusive” following the sequence is unnecessary as “through” means “up to and including”.

- (j) When writing an ordinal number, a word representing position or rank in a sequential order (first, second, third, etc.), use the word for the ordinal number, not the numerical expression for the ordinal number.

Do Not Say: The Commissioner shall mail all responses by the 21st of each month.

Say: The Commissioner shall mail all responses by the twenty-first of each month.

Comment

These rules are designed to ensure uniformity with the existing Code usages.

Notwithstanding the rules in this chapter, when using the word “one” as a pronoun, only write it as a word, not a numeral.

Rule 20. Plurals.

- (a) Follow the general grammatical rule of adding “s” or “es” to a noun to form its plural.
- (b) An exception to the general rule in (a) is words borrowed from another language that lack an Anglicized plural form.
- (c) For titles of two or more words, make the important word plural.

| Singular | Plural |
|------------------|-------------------|
| attorney general | attorneys general |
| general counsel | general counsels |
| notary public | notaries public |

- (d) Remember that the subject and verb should agree. Plural subjects require plural verbs. However, remember that collective nouns are singular unless the meaning of the sentence indicates the members are functioning as individuals; they are plural.

Rule 21. Possessives.

- (a) To form the possessive of a singular noun, irregular plural noun, or indefinite pronoun, add an apostrophe (') and an "s" to the word.

Example of the Possessive Form of a . . .

Singular Noun: One month's worth

Irregular Plural Noun: The women's hammers

Indefinite Pronoun: Someone's raincoat

- (b) To form the possessive of a plural noun that ends in "s," add an apostrophe (') to the word.

Example of the Possessive Form of a Plural Noun Ending in "S"

Six days' worth

The cats' noses

Rule 22. Prefixes.

Join a prefix to a noun without a hyphen in most cases.

Examples of Prefixes Without Hyphens: anti, co, de, extra, hyper, hypo, infra, inter, intra, macro, micro, mid, mis, multi, non, over, post, pre, pro, pseudo, re, semi, sub, super, supra, un, under

Comment

A hyphen is added between a prefix and a noun if the omission may cause confusion about the meaning of a word, it seems awkward, or it affects the pronunciation. A hyphen is also added when a proper noun has a prefix.

Do Not Say: recreation, represent, coowner, intraagency, midAtlantic

Say: re-creation, re-present, co-owner, intra-agency, mid-Atlantic

Rule 23. Punctuation.

(a) **Generally.** Punctuate carefully.

(b) **Brackets.** Brackets are most commonly used to enclose words or phrases inserted into a quotation. Do not use brackets as a form of punctuation in legislation. Brackets may be used to highlight for the Code Revisors that a date, usually an effective date, needs to be inserted into a Code provision.

(c) **Colons.** Colons can be used after an independent clause, usually introductory language, to direct attention to a list; an appositive, a noun or noun phrase that explains, identifies, or renames another noun right beside it; or a quotation or between independent clauses where the second summarizes or explains the first.

(d) **Commas.** Commas are the workhorse of the punctuation world and are drafted into service to assist the reader's understanding.

(1) **Dates.** Use commas to set off the year of a date when month, day, and year are given. Do not use commas when only the month and year are given.

(2) **Numbers.** Use a comma in numerals of 1,000 or more.

(3) **Series.** The serial comma is used to separate words in a series.

Use a comma followed by “or” to separate the last of a disjunctive series of three or more words, phrases, or clauses in a sentence.

Use a comma followed by “and” to separate the last of a conjunctive series of three or more words, phrases, or clauses in a sentence.

(4) **Parenthetically.** Use commas to set off clauses that describe a subject already identified or provide supplemental information or to set off appositives.

(5) **Coordinating Conjunctions.** Use commas prior to a coordinating conjunction (“and”, “but”, “or”, “nor”, “for”, “so”, and “yet”) when the coordinating conjunction connects two or more independent clauses.

(e) **Dashes.** Dashes, formed by typing two hyphens next to each other (--) are used to set off parenthetical material deserving emphasis, to mark appositives that contain commas, or to prepare for a list. Dashes are rarely used in drafting legislation in Delaware.

(f) **Ellipses.** The ellipsis mark consists of spaced periods and indicates that words have been deleted from a quotation. Three periods are used to delete from within a quoted sentence. Four periods are used when what is deleted comes at the end of the sentence; the fourth period is the period ending the sentence. This form of punctuation is generally not needed in legislation.

(g) **Parentheses.** Use parentheses only if necessary to make clear a reference to another statutory provision by indicating the nature of the referenced provision.

Example: Subject to § 2401(a)(3) (good faith purchasers)

Otherwise, do not use parentheses in statutes. Parentheses are often used by inexperienced drafters in place of commas in a descriptive, nonrestrictive clause, to give an example, or to provide an alternative restatement of language used. If you feel the need to parenthesize, reconsider the language you are attempting to explain.

(h) **Quotation Marks.** When drafting legislation, many grammatical conventions regarding quotation marks are ignored:

- (1) Use quotation marks to indicate text being deleted from or inserted into a bill by an amendment or to indicate the bill text used within the instructional language of an amendment.
- (2) In drafting an amendment, ignore the grammatical convention requiring certain punctuation to be placed within quotation marks and certain punctuation to be placed outside quotation marks. Instead, place punctuation marks within quotation marks when the punctuation mark either appeared in the existing source material or must appear in the bill to properly amend the existing source material. See Part V.
- (3) For consistency sake, comply with paragraph (h)(2) of this rule even when drafting a resolution.

(i) **Semicolons.**

- (1) Use semicolons between items in a series containing internal punctuation (typically commas).
- (2) Use semicolons between closely related independent clauses not connected by a coordinating conjunction.

(j) When in doubt about punctuation not addressed in this manual or when more information is desired, refer to the *United States Government Printing Office Style Manual*, a modern dictionary, or the most recent edition of *Black's Law Dictionary*.

Comment

Because clarity is especially important when drafting legislation, use the Oxford (or serial) comma.

Always put a comma before the ‘*and*’ or ‘*or*’ in a series when the last two words in the series are intended to be separate (*a brief must contain a statement of issues, statement of the case, statement of facts, argument, and conclusion*). In this example, the comma before the ‘*and*’ is necessary to show that the argument and conclusion are each a separate part of the brief. If there were no comma, it would be possible to read the words ‘*argument and conclusion*’ to mean that the last section of the brief would include both an argument and a conclusion. The comma before the ‘*and*’ eliminates the possibility of confusion and misinterpretation. Although this principle was once a standard rule of grammar, it has fallen into disfavor. W. Strunk, Jr., and E. B. White, *The Elements of Style*, however, still recommend it.¹¹⁶

Rule 24. Compounding Words and Hyphenation.

- (a) Consult a reputable dictionary to determine how to treat a compound word.
- (b) When two words are combined to form an adjective, those two words are typically hyphenated.
- (c) When in doubt, use a hyphen in words when doing so will aid clarity and readability by avoiding confusion, awkwardness, or pronunciation problems.

Comment

Compounding, hyphenation, and spelling examples are provided in Chapter 3, Section 3, B of this part.

¹¹⁶ R. J. Martineau, *Drafting Legislation and Rules in Plain English*, 102 and 105 (1991).

Rule 25. Definitions: Generally.

(a) Define a term, whether a single word or phrase, if any of the following apply:

- (1) The term has several meanings and it is necessary to preclude any unintended construction of the legislation supported by a contradictory meaning.¹¹⁷
- (2) The term is used in a sense that is broader or narrower than its common or dictionary usage.
- (3) Use of the defined term will avoid repetition of a lengthy phrase and improve the clarity of the legislation.

Note: Do not formally define a term that is familiar, clear, and used in its dictionary sense.

(b) An example of prefatory language used to amend a definition section is:

Example: Section 1. Amend § 222, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

This general instruction informs the Code Revisors to make additional changes (redesignating) to the definition section without the need for the drafter to spend multiple lines (or pages) specifically indicating the redesignating of the entire definition section. This saves time for the drafter and the reader, and printing costs for the General Assembly.

(c) An example of introductory language used to introduce a series of definitions is:

For purposes of this chapter (title, section, etc.):

Avoid using the phrase “unless the context requires otherwise” when drafting a definition section, as this phrase undermines the integrity of the defined terms because it invites administrators and courts to interpret the term.

(d) If a term can be used as more than one part of speech and is used in the legislation in an ordinary sense as well as a defined sense, a limitation to the definition should be added immediately after the term.

Example: “Record,” used as a noun, means

¹¹⁷ See *Andrews v. State*, 34 A.3d 1061 (Del. 2011) (using a dictionary to define “residence” as it appears in a provision regarding sex offender registration, rather than adopt the State’s definition, which was based on the definition of “reside” as found elsewhere in Title 11 but not cited to by the sex offender registration statute. The General Assembly then passed legislation defining “residence” in the statute – see 78 Del. Laws, c. 367 (2012)).

- (e) Do not include substantive provisions in a definition.

Example:

In a definition of “termination,” for example, it is incorrect to add the following sentence: “On ‘termination’ all obligations that are still executory on both sides are discharged and any rights based on prior breach of performance survive.” The sentence is substantive law, not definitional.

- (f) Arrange all defined terms in alphabetical order and place them at the beginning of the chapter if they are used generally in the chapter. If a defined term is used in only a single section or subchapter, locate the definition at the beginning of the portion of the Code highest in rank in which the term is used.

Example: If the term is used only in §§ 202, 205, and 208 of Subchapter II, place the definition in § 201 of Subchapter II.

- (g) Begin the definitional sentence with the defined term. This requires the defined term to be capitalized. However, when the term is repeated within the text, it should not be capitalized unless the capitalization rules set forth in Drafting Rule 18 demand it.
- (h) Use the defined term in the substantive provision, rather than its definitional language.
- (i) The definition of a word or phrase should not contain the word or phrase being defined.
- (j) Once a word or phrase is defined, there should be no change in the manner in which it is used; the specific definition should remain constant throughout the bill.

(k) **Person v. Individual.** In the wake of *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), be cautious when using the term “person”. Like the U.S. Code’s Dictionary Act, which proved dispositive in *Hobby Lobby*, the Delaware Code contains a similar definition provision, Title 1, § 302, which is intended to apply throughout the Delaware Code unless superseded by a definition provision in the applicable division of the Code (title, chapter, section, etc.). A drafter, and the General Assembly, is presumed to know the existence of Title 1, § 302 and the definition of “person” contained within it.¹¹⁸ Therefore, unless the division of the Code contains an alternative definition of “person” to mean only human beings and specifically exclude nonhuman entities, or an alternative definition of “person” is drafted into the legislation:

- (1) Use “person” to apply a law to human beings and to nonhuman entities, such as corporations or governmental bodies.
 - (2) Use “individual” to limit the application of a law to human beings. Avoid using the term “natural person” in place of “individual”.
 - (3) Whether using “person” or “individual,” use the same form of reference in statutes relating to the same subject matter.
- (l) If a definition of “person” or “state” is necessary, consider using the following definitions:
- (1) “Person” includes an individual, corporation, business trust, estate trust, partnership, limited liability company, association, joint venture, [government; governmental subdivision, agency, or instrumentality; public corporation.] or any other legal or commercial entity. [The term does not include government; governmental subdivision, agency, or instrumentality; or public corporation.]

Note: This definition is an amalgamation of definitions for “person” found within the Code. The unbracketed portion is from § 302(15) of Title 1. The bracketed portion is from § 1-201 of Title 6 in the Uniform Commercial Code. Delete one of the bracketed phrases to ensure inclusion or exclusion of governmental entities.

- (2) “State” means the State of Delaware, and, when applied to different parts of the United States, includes the District of Columbia and the several territories and possessions of the United States.¹¹⁹

¹¹⁸ *State ex rel. Milby v. Gibson*, 140 A.2d 774 (Del. Super. 1958).

¹¹⁹ *See* 1 Del. C. § 302(18).

- (3) When referring to the State of Delaware write “State.”¹²⁰

Note: Section 302 of Title 1 contains 24 definitions of general words intended to apply throughout the Code, including “person” and “State”, unless context or another definition requires a different meaning. Check § 302 before drafting any definition.

(m) A defined term may be defined by reference.

- (1) Defining a term by reference is accomplished in the same way as any other reference, by providing the Code citation for the definition being referenced. And, the reference can be included in a definition section or following the term in a Code provision.

Definition Section Example:

“Bylaws” means as defined in § 81-103 of Title 25.

Code Provision Example:

No unlicensed person shall sell or transfer any firearm, as defined in § 222 of this title

- (2) When defining a term by reference, take into account the discussion in Drafting Rule 32 regarding the effect of incorporation by reference and consider whether the term used and the term to be referenced are so closely related that a future change in the definition of the term referenced will be acceptable for the term used.

Comment

Additional considerations regarding drafting definition sections can be found in Part III, Chapter 2, Section 2, G. (Definitions).

¹²⁰ See 1 Del. C. § 302(18)

Rule 26. Definitions: The Meaning of “Means” and “Includes”.

The word “means” is seldom misused, but the word “includes” is frequently found where it should not be or is accompanied by language that prevents it from playing its part as the dictionary intended.¹²¹

- (a) Use “means” if a definition is intended to exhaust the meaning of a term. In an exhaustive definition, avoid using the term itself in the definitional language. If the term embraces more than one meaning, close the series with “or”.

Example: “Tribunal” *means* a court, agency, *or* other entity authorized to establish, enforce, or modify a child-custody determination.

- (b) Use “includes” if a definition is intended to make clear that the term encompasses only some of the specific matter. If the definition embraces more than one additional meaning, close the series with “and”.

Example: “Animals” *includes* fish, reptiles, *and* birds.

The meaning of a defined term, or an undefined term having an ordinary meaning, may be expanded to embrace one or more additional meanings, by using “includes” in the qualifying language.

Example:

If “wages” is defined in the legislation, add the following to the definition: The term *includes* gratuities received by an employee from patrons of the employer in the course of employment.

If “wages” is not defined in the legislation, the example would read: “Wages” *includes* gratuities received by the employee from patrons of the employer in the course of employment.

- (c) Do not use the phrase “means and includes” in a definition. This phrase is a nullity, as “means” is complete and “includes” is partial.
- (d) **Do not use “includes but is not limited to”.** This phrase is redundant, as “includes” is not a term of limitation. Its use weakens the meaning of the term “includes” and invites misinterpretation by the courts.
- (e) Unless the intent is otherwise, use “means” rather than “includes”.

¹²¹ Lawrence Filson & Sandra Strokoff, *The Legislative Drafter’s Desk Reference*, 133 (2nd ed., 2008).

(f) The meaning of a defined term, or of an undefined term having an ordinary meaning, may be narrowed by adding qualifying language.

Example:

The term “wages” *does not include* birthday gifts and rewards for suggestions to enhance efficiency.

“Instrument” *means* a negotiable instrument.

Comment

If a word or phrase is to be explicitly defined with no exceptions, the definition must use the word “means”. In the example, “‘Water’ means a river”, the term “water” does not include lakes or streams or bays. If the definition is intended to be partial only, the best practice is to use the word “includes”. In the example, “‘Water’ includes rivers”, the term “water” might also include lakes, streams, and bays. Therefore, using “includes” allows a court or administering agency to adopt additional meanings; using “means” restricts them to reasonable constructions of your wording. This was recognized by the Supreme Court in *Coastal Barge Corporation v. Coastal Zone Industrial Control Board*, 492 A.2d 1242, 1246-1247 (Del. 1985), when the Court noted that “a term whose statutory definition declares what it ‘includes’ is more susceptible to extension of meaning by construction than where the definition declares what a term ‘means’.”

Rule 27. Parallel Construction.

Sentences, paragraphs, subsections, sections, and other units of the Code that serve a parallel function should be organized and written in a parallel fashion.

Do Not Say: The Department shall collect fees for renewing a license, amending a license, and an inspection of a license holder’s premises.

Say: The Department shall collect fees for renewing a license, amending a license, and *inspecting* a license holder’s premises.

Comment

Parallel construction is another technique employed to ensure accuracy, clarity, and uniformity within the legislation and the Code.

Rule 28. Limitations, Exceptions, Qualifications, and Conditions.

(a) Place a limitation, condition, or qualification to the applicability of a provision of legislation at the beginning of the subordinated provision, so that it will be readily noticed. The subordinated provision should reference the dominant provision.

Example: Except as otherwise provided in § 201(a) OR Subject to § 201(a)

Use “Except as otherwise provided” to indicate that the dominant provision referred to, at least in some situations, limits or qualifies the rule stated in the subordinated provision. Use “Subject to” to indicate that the dominant provision, though not inconsistent with the subordinated provision, provides other criteria that should be considered in construing the subordinated provision.

(b) If a provision is limited in its application or is subject to an exception or condition, it promotes clarity to begin the provision with a statement of the limitation, exception, or condition or with a notice of its existence.

Example: (a) Except as otherwise provided in subsection (b)

(c) Avoid using “notwithstanding” as a general override of existing Code provisions.

Example:
(b) Notwithstanding anything in the Code to the contrary

(d) Do not use “provided that” or “provided, however, that”, or a similar proviso. Use “but” instead of “except that”.

(e) Negate only unintended and reasonably inferable implications of a provision of legislation.

Example: “Person” includes an individual, corporation, business trust, estate trust, partnership, association, joint venture, or any other legal or commercial entity. The term *does not include* a government; a governmental subdivision, agency, or instrumentality; or a public corporation.

Without the negating sentence in this example, one could reasonably infer that a governmental body is within the scope of the definition as “any other legal or commercial entity”.

Comment

Place limitations or exceptions to legislation where they are noticed. Consistent placement in the first part of legislation or a provision serves to avoid surprises.

Using “notwithstanding” as a general override of an existing Code provision does not aid clarity:

Congress sometimes seeks to underscore the primacy of a statutory directive by stating that it is to apply “notwithstanding” the provisions of another, specified statute or class of statutes. Courts take into account this expressed intent to override the provisions specified in a “notwithstanding” clause, but when the clause purports to override “any other provision of law,” its preclusive scope often is unclear. One court, for example, ruled that a directive to proceed with timber sale contracts “notwithstanding any other provision of law” meant only “notwithstanding any provision of environmental law,” and did not relieve the Forest Service from complying with federal contracting law requirements governing such matters as non-discrimination, small business set-asides, and export restrictions. “We have repeatedly held that the phrase ‘notwithstanding any other law’ is not always construed literally . . . and does not require the agency to disregard all otherwise applicable laws.” Still, there are cases that have given full measure to “any other provision of law.”¹²²

Thus, provide for the specific provisions of the law that are intended not to apply to the given circumstance being drafted.

As indicated in subsection (d) of this rule, “provided that” and “provided, however, that” should be purged from a drafter’s toolkit because the phrases violate Rules 1 and 2, that is, they are unclear, uncertain in their reach, and create unwieldy sentences. Replace the terms with “but” by ending the sentence and beginning a new one with a capitalized “But”. As Bryan Garner notes, “That’s how the drafters of the U.S. Constitution did it – eight times –and they were grammatically unimpeachable on that score.”¹²³

Rule 29. Series and Tabulations.

(a) Break a sentence into its parts and present them as a series in tabular form only if the meaning is made substantially clearer or if doing so makes it easier to cite to a part of the sentence.

¹²² Larry M. Eig, Cong. Research Serv., *Statutory Interpretation: General Principles and Recent Trends* 37 (2011).

¹²³ Bryan Garner, *Bryan Garner On Words, Ax these terms from your legal writing*, ABA Journal (April 2014), available at <http://goo.gl/LuKvZk> (last visited December 9, 2016).

(b) In drafting a tabulated list intended for inclusion within the Delaware Code, the following standards apply:

(1) Each item must be paragraphed and indented in conformity with Formatting Rule 5.

(2) The first word in each item must be capitalized.

(3) Each item must end with a period.

(4) In lieu of using “or” or “and” to indicate the disjunctive or conjunctive in a tabulated series, a phrase in the introductory language of the tabulation more clearly expresses how many of the items in the tabulation are to be required, such as: “the following”, “any of the following”, “one of the following”, “all of the following”, or “one or more of the following”, followed by a colon.

(c) Do not include in the last item of a tabulation language meant to qualify all of the items.

(d) Do not place an undesignated sentence or paragraph after a tabulated list. If the sentence or paragraph is not a part of the tabulated series, draft it as a separate provision. If it is part of the tabulated series, reformulate the introductory language to encompass it.

Example:

Given:

§ 101. Licensing of dangerous dogs.

(a) The following are dangerous dogs: (1) German shepherds, (2) mastiffs, and (3) Rottweilers, which must be licensed.

OR

§ 101. Licensing of dangerous dogs.

(a) The following are dangerous dogs:

(1) German shepherds.

(2) Mastiffs.

(3) Rottweilers.

These dogs must be licensed.

These examples can be transformed into a tabulated list and improved for clarity and conformity with Rule 29 (b), (c), and (d) as follows:

(a) The following are dangerous dogs and must be licensed:

(1) German shepherds.

(2) Mastiffs.

(3) Rottweilers.

Comment

Tabulation is useful for lists. Tabulation is especially appropriate if the context precludes the use of short sentences. Consider using tabular form if a number of rights, powers, privileges, duties, or liabilities are granted to or imposed upon a person and in other situations if tabulation makes the meaning substantially clearer.

Constructing a tabulated list in conformity with this rule also simplifies future amendments to the tabulated series and avoids improper interpretation by courts of the disjunctive or conjunctive nature of the series.

See Drafting Rule 30 concerning the manner of designating items in a tabulation.

Rule 29A. Amending a Tabulated List.

(a) When amending a tabulated list, including a definition section, begin by including the introductory language of the tabulated list, even if it is not being changed. An example of introductory language follows:

(a) The following are dangerous dogs and must be licensed:

(b) After the introductory language, a drafter should include only the paragraphs being deleted from or inserted into the list.

Given:

§ 101. Licensing of dangerous dogs.

(a) The following are dangerous dogs and must be licensed:

- (1) German shepherds.
- (2) Mastiffs.
- (3) Rottweilers.

If the drafter wished to remove mastiffs from the list, then the drafter would draft the following:

Section 1. Amend § 101, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 101. Licensing of dangerous dogs.

(a) The following are dangerous dogs and must be licensed:

~~(2) Mastiffs.~~

(c) If paragraphs are being deleted from a tabulated list, do not use the “re designate accordingly” prefatory language or redesignate by hand within the bill. Redesignating tabulated lists hides a repeal and introduces instability into the Code for the reasons explained in Drafting Rule 30.

(d) If paragraphs are being inserted into a tabulated list, try to add the inserted items to the end of the tabulated list. Insert new items between existing items only as a last resort and only after first determining the impact to internal references and the agency charged with administering the provision. See Drafting Rule 30. If new items must be inserted between existing items, use the sample prefatory language for redesignating in Drafting Rule 25(b).

Comment

When applying Rule 29A(b), do not use ellipses or other symbols to indicate that other items have been omitted from the list. The prefatory language ensures that the Code Revisors will alter the Code only as directed. Omitting portions of the Code from legislation will not result in a repeal of the omitted portions, because changes to the Code occur only in accordance with the prefatory language, i.e., “by making deletions as shown by strike through and insertions as shown by underline”.

Rule 29B. Amending an Undesignated List.

(a) An “undesignated list” is a tabulated list that does not use the hierarchy of the Delaware Code to organize the items in the list. An example from Title 11 follows:

| | |
|---|---|
| § 4201. Transition provisions. | |
| (c) The following felonies shall be designated as violent felonies: | |
| Title 11, Section | Crime |
| 513 | Conspiracy First Degree |
| 602 | Aggravated Menacing |
| 604 | Reckless Endangering First Degree |
| 605 | Abuse of a Pregnant Female in the Second Degree |
| 606 | Abuse of a Pregnant Female in the First Degree |
| 612 | Assault in the Second Degree |
| 613 | Assault in the First Degree |

(b) When amending an undesignated list, make the amendment through a separate bill Section so that the only change made by the bill Section is to the undesignated list. Include only the change being made to the list. And, when removing from or adding to an undesignated list, include in the prefatory language for that bill Section language used in the following examples:

Section 1. Amend § 4201, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by reorganizing accordingly:

§ 4201. Transition provisions.

(c) The following felonies shall be designated as violent felonies:

| Title 11, Section | Crime |
|-------------------|---|
| <u>787</u> | <u>Trafficking of Persons and Involuntary Servitude</u> |

Section 1. Amend § 4201, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by reorganizing accordingly:

§ 4201. Transition provisions.

(c) The following felonies shall be designated as violent felonies:

| Title 11, Section | Crime |
|-------------------|---|
| 630A | Vehicular Homicide in the First Degree |

Section 1. Amend § 4201, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by reorganizing accordingly:

§ 4201. Transition provisions.

(c) The following felonies shall be designated as violent felonies:

| Title 11, Section | Crime |
|-------------------|---|
| 630A | Vehicular Homicide in the First Degree |
| <u>787</u> | <u>Trafficking of Persons and Involuntary Servitude</u> |

(c) Include in the synopsis a clear indication of the intent to remove from or add to the undesignated list.

Rule 29C. Enumeration Provisions and “Include”.

(a) An “enumeration provision” is a list created within the law. It differs from a tabulation, as in Drafting Rule 29, in that it is a list within a sentence.

Example: The Commissioner shall refuse to grant a license for the sale of alcoholic liquor by any restaurant, tavern, taproom, hotel, store, or other establishment

(b) Prior to drafting an enumeration provision, determine the intent of the enumeration provision, as administrators or the courts may expand or limit the provision, depending on how it is constructed.

(c) To create an exclusive enumeration provision, construct it using only the specific terms intended to be included and omit “includes” or “including” and all general terms (terms usually preceded by “other”, “any other”, or similar terms).

Example: Notwithstanding § 922 of this title, the Court may not find military, correctional, or police-owned dogs dangerous or potentially dangerous if the attack or injury to a person or domestic animal occurs while the dog is performing duties as expected.

(d) To create a nonexclusive or exemplary enumeration provision, construct it so that the list is preceded by “include”. In such a case, use both specific terms and general terms in constructing the list.

Example: “Improvement” includes buildings, highways, roads, streets, bridges, entrances and walkways of any type constructed thereon, and other structures affixed to and on land, as well as the land itself

(e) To create a nonexclusive enumeration provision with some limitation, construct the provision using specific and general terms which are of the same type or nature as each other. Furthermore, the general term must be one that clearly belongs to the same class as the specific terms. This enables the general term to expand the list beyond what is specifically included, but limits the items included within the general term to items of the same class created by the specific terms.

Example: The public health authority may purchase and distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents

Comment

Delaware decisional law and the accepted canons of statutory construction form the foundation for this rule. Specifically, subsection (c) of this rule follows the canon of statutory construction *expressio unis est exclusio alterius*, meaning “the expression of one thing is the exclusion of another,” which “provides that where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are affirmatively or negatively designated, there is an inference that all omissions were intended by the legislature.”¹²⁴ And, the rule provided in subsection (d) of this rule is established by two Delaware Supreme Court cases, each finding that prefacing a list with “include” makes the listing “exemplary, not exclusive”¹²⁵ and “the doctrine of *ejusdem generis* does not require [the general term to] be limited in its scope to the things specifically named in [the list].”¹²⁶ Finally, subsection (e) of this rule is in keeping with the canon of statutory construction *ejusdem generis*, meaning “of the same class”. The Delaware Superior Court has stated:

Where general words follow the enumeration of particular classes of things they will be construed as having reference to matters or things of the same general nature. The particular word may be said to be the genus, the general word used for including other species of the same genus. The rule manifestly rests upon the reason that, if the Legislature had intended the general word to be used in an unrestricted sense, no mention would have been made at all of the particular classes, and it is very generally held that the words “other” or “any other” following an enumeration of particular classes are to be read as meaning “other such like” and include only words of like kind or character.¹²⁷

Rule 29D. Drafting Series, Tabulations, and Enumeration Provisions to Avoid the Doctrine of the Last Antecedent.

(a) The doctrine of the last antecedent is a canon of statutory construction applied to statutes that include a list of words or phrases followed by a qualifying word or phrase.

Example of a List Followed by a Qualifying Phrase:

A commercial vehicular license does not apply to boats, tractors, and trucks *under 3 tons*.

In the above sentence, “under 3 tons” is the qualifying phrase.

¹²⁴ *Brown v. State*, 36 A.3d 321, 325 (Del. 2012) (quoting *Leatherby v. Greenspun*, 939 A.2d 1284, 1291 (Del. 2007)).

¹²⁵ *City of Dover v. Int’l Tel. & Tel. Corp.*, 514 A.2d 1086, 1089-90 (1986) citing *Gage v. City of Wilmington*, 293 A.2d 555 (Del. 1972).

¹²⁶ *Id.* at 1089.

¹²⁷ *Bigger v. Unemployment Comp. Comm.*, 46 A.2d 137, 141 (Del. Super. 1946), *aff’d* 53 A.2d 761 (Del. 1947). See also *Del. Bd. of Nursing v. Gillespie*, 41 A.3d 423, 427 (Del. 2012).

(b) When the doctrine is applied by courts, the courts find that the qualifying word or phrase refers to the word or phrase immediately preceding the qualifier, not to more distant words or phrases. The doctrine is not absolute and courts will not apply it when common sense and other indicia of meaning demonstrate that the qualifying word or phrase was meant to apply to more distant or less obvious words or phrases.

(c) The Delaware Supreme Court has employed the doctrine as a method of statutory construction, finding in one case that the doctrine applied and the qualifying phrase referred solely to the last antecedent¹²⁸ and in another that other indicia of meaning demonstrated the qualifying phrase applied to all antecedents.¹²⁹ In 2016, the U.S. Supreme Court, by a vote of 7 to 2, reaffirmed its support for the doctrine over a dissent advocating that the Court look to the ordinary understanding of how English works.¹³⁰

(d) As the doctrine does not produce certainty in interpretation, draft series, tabulations, and enumeration provisions to prevent a court from having to apply the doctrine by using the following methods:

- (1) If the qualifying phrase only applies to one item, change the order of the items in the list.¹³¹

Example:

Given – To get dessert, you must eat ham and eggs that are green.

Rewrite As – To get dessert, you must eat all of the following:

1. Eggs that are green.
2. Ham.

¹²⁸ *Rubick v. Security Instrument Corp.*, 766 A.2d 15, 18 (Del. 2000).

¹²⁹ *E.I. DuPont de Nemours & Co. v. Green*, 411 A.2d 953, 956 (Del. 1980).

¹³⁰ *Lockhart v. U.S.*, 136 S.Ct. 958 (2016).

¹³¹ Jerry Payne, *The Doctrine of the Last Antecedent*, The Legislative Lawyer (May 2014).

- (2) If the qualifying phrase applies to each item in the list, move the qualifying phrase to the front of the generic term or repeat the qualifying phrase.¹³²

Example:

Given – To get dessert, you must eat ham and eggs that are green.

Rewrite As – To get dessert, you must eat all of the following, which must be green:

1. Eggs.
2. Ham.

OR

Rewrite As – To get dessert, you must eat all of the following:

1. Green eggs.
2. Green ham.

Rule 30. Maintaining the Stability of the Code.

- (a) Use the accepted names for the units of the Code when drafting legislation.

Units of the Code:

Title
Part
Chapter
Subchapter
Subpart (extremely rare)
Section

- (b) Number the bill Sections and the proposed Code sections with Arabic numerals consecutively or progressively throughout the legislation.
- (c) A descriptive Code section heading is usually not relied upon to convey or ascertain the legislative purpose or sense of a section; it is merely a signpost.¹³³
- (d) Use short Code sections. Use a separate Code section for each distinct topic.

¹³² *Id.*

¹³³ See 1 Del. C. § 306. But see *Spielberg v. State*, 558 A.2d 291 (Del. 1989).

- (e) Follow the established internal hierarchy for a Code section and use the accepted names for the parts of the internal hierarchy.

Structure of and Names for the Internal Hierarchy of a Section (See Formatting Rule 5 for more details):

§ 101. [Section]
(a) [subsection]
 (1) [paragraph]
 a. [paragraph]
 1. [paragraph]
 A. [paragraph]
 I. [paragraph]
 (A) [paragraph]
 (I) [paragraph]

Note: In sections with an undesignated first subsection (no “subsection” designation, typical with definition sections), the first level is still referred to as “paragraph.”

- (f) If a section covers a number of contingencies, alternatives, requirements, or conditions, divide the section into smaller parts, as necessary, following the internal hierarchy set forth in Formatting Rule 5. A paragraph may be divided into one or more lower levels of a paragraph, but try to avoid using anything below the initial paragraph level. Instead, divide a section into several sections as an alternative.

- (g) Do not use internally numbered clauses where each clause remains within the run-on sentence structure and is not a separate paragraph in a tabulated list or sentence. Burying designations in this way leads to uncertainty within the Code. If there is no other way to draft it, however, romanettes should be used to prevent confusion with the internal hierarchy.¹³⁴

- (h) If there is no available section or chapter number where a drafter desires to insert a new section or chapter, use an upper case letter with an existing section or chapter number to squeeze in a new section or chapter, rather than inserting a new section or chapter in an existing section or chapter and to redesignate existing sections or chapters. This technique can also be used to add a new bill Section to a bill.

Example:

§§ 2107, 2107A, and 2108.

Chapter 50, *Chapter 50A*, and Chapter 51.

Section 5, *Section 5A*, Section 6.

¹³⁴ The term is the plural form of romanette, which means a lower case Roman numeral, such as “ii”.

- (i) Avoid redesignating existing chapters, sections, or other parts of the internal hierarchy, excluding definition sections, due to the impact on internal references.
- (j) The Code Revisors place a “repealed” designation in the Code to indicate when a portion of the Code has been repealed and to provide notice to readers of the repeal. A drafter may reuse a repealed section 5 years after the repeal occurs.
- (k) Historically, when an entire chapter or subchapter was repealed and a new chapter or subchapter on the same topic was created, but with less subchapters or sections than previously, the Code Revisors would continue to include the full complement of subchapters or sections but would place a “reserved” designation on the unused portions to allow for future growth. This practice has been abandoned in recent years. Regardless, a drafter may use “reserved” provisions whenever necessary.
- (l) Drafting a portion of a Code section that is not identified by an internal hierarchy designation, called an “undesigned subsection” or “undesigned paragraph”.

Comment

Maintaining the stability of the Code is one of the many tasks the drafter assumes when drafting legislation. Drafters must be guided by the doctors’ axiom, “first, do no harm”. To fulfill this axiom, a drafter must have a working knowledge of the structure of the Code and an understanding of the importance in maintaining a stable structure.

Subsections (a) and (e) give drafters a brief introduction into the basic structure of the Code. This structure is one that, with rare exception, must be followed to preserve the Code’s uniformity and predictability. The rare exception to the structure outlined in subsections (a) and (e) occurs with portions of the Code based on uniform laws developed by the Uniform Law Commission. The Code Revisors give up uniformity within the Delaware Code to uniformity across the laws of the States.

Subsections (b) through (d) and (f) and (g) offer basic insight and rules into the structuring of a Code section.

Subsection (h) provides a mechanism to insert a new section or chapter when a Code chapter or title seemingly has no additional space for a new chapter or section. This method, in addition to repurposing repealed sections [subsection (j)], is the method a drafter should use to make additional space for new sections or chapters, and, along with subsection (i) assures the stability of the Code. Most importantly, following the rules in subsection (h) and (i) also ensures that the drafter affects no internal references elsewhere in the Code.

Subsection (l) directs drafters not to create undesigned subsections or paragraphs as undesigned portions of a section cause confusion for those reading and interpreting the Code, especially courts, and can lead to difficulty citing or amending the undesigned portion or may cause the undesigned portion of a section to be absorbed by the designated portion above it in the drafting or revision process.

Rule 30A. Amending a Code Section “Versioned” by an Effective Date.

(a) To ensure the stability of the Code, a drafter must properly amend a Code section that has been “versioned” due to an effective date provision in previously enacted legislation. When a bill amending the Delaware Code and containing an effective date is enacted, it results in Code sections in the bill becoming “versioned” in the Code. “Versioning” is done by the Code Revisors and consists of at least two of the same Code section being placed in the Code, one currently effective section and one or more effective on some future date and different in some material way from the Code section that is effective now.

(b) A drafter can tell that a Code section has been “versioned” in the Delaware Code Online by the fact there are two or more copies of the same Code section with brackets in the Code section heading indicating when a given version is effective.

Example

§ 10003. Examination and copying of public records. [Effective until Jan. 1, 2015]

§ 10003. Examination and copying of public records. [Effective Jan. 1, 2015, until July 1, 2015]

§ 10003. Examination and copying of public records. [Effective July 1, 2015]

(c) It is the drafter’s obligation to inform the client that a Code section is “versioned” and to ascertain whether the client’s desired change is one that is to be effective only in the currently effective version, or in the version to be effective in the future, or both.

(d) If the client desires a change to be effective only in the currently effective version or only in the version to be effective in the future, include only the currently effective version, or the version to be effective in the future, in the bill and make the necessary changes to that version using the strike through and underline process.

(e) If the client desires a change to be effective both in the currently effective version and the version to be effective in the future, include both versions and make the necessary changes to both versions using the strike through and underline process. Include the effective date bracket in the bill to differentiate the versions.

Comment

Abiding by this rule ensures that the client’s intent is clear to the reader and the Code Revisors. This avoids the situation where a drafter amends only the currently effective version, intending for the change to carry on to the version to be effective in the future, only to find the change is

not carried through because the two versions conflict in some material way that makes the change incompatible in the version to be effective in the future.

Be aware that if the drafter's bill amends a given Code section that was not versioned drafted and the given Code section becomes versioned by another bill that was introduced later in time but enacted first, the Code Revisors will amend both versions of the Code section, as they presume the intent of the drafter's bill, when drafted, was for the change to carry on into the future.

Rule 30B. Transferring an Entire Unit of the Code.

(a) A drafter may be called upon to transfer an entire unit of the Code (part, chapter, subchapter, section, etc.). When this occurs, avoid using the strike through and underline method to delete the division from its current location in the Code to insert it in its new location. Instead, follow the example below to accomplish the transfer:

Given a need to transfer Chapter 80 from Title 3 to Title 16, where Chapter 80 will become Chapter 30E the drafter would draft the following prefatory language:

Section 1. Amend Title 3 **[the next highest unit of the Code where the unit to be transferred currently exists; Part should never be used for directional purposes in legislation]** and Title 16 **[the highest unit of the Code receiving the existing Chapter]** of the Delaware Code by transferring Chapter 80 of Title 3**[the location of unit to be transferred]** to Title 16 **[the next highest unit of the Code receiving the existing Chapter]**, redesignating present §§ 8001 through 8007 of Title 3 as §§ 3001E through 3007E of Chapter 30E of Title 16.

Note: The bolded bracketed text is provided as additional context for purposes of this example and should not appear in legislation.

(b) If, in addition to transferring an entire unit of the Code, make changes to the unit, then first use the example prefatory language from subsection (a) of this rule to make the transfer and then use the strike through and underline process to make the necessary changes, noting in the prefatory language that the process is being used.

Example [Based on the example in subsection (a) of this rule]:

Section 1. Amend Title 3 and Title 16 of the Delaware Code by transferring Chapter 80 of Title 3 to Title 16, redesignating present §§ 8001 through 8007 of Title 3 as §§ 3001E through 3007E of Chapter 30E of Title 16 and then by making deletions as shown by strike through and insertions as shown by underline as follows:

Comment

Abide by subsection (a) of this rule when transferring a unit of the Code from one location in the Code to another location in the Code, rather than using strike through to delete the unit from one location and underline to insert it into another location, as this ensures that no additions or subtractions are made to the unit in the process of inserting it into its new location. Additionally, this method saves printing resources by not producing an entire unit twice, one struck through and once underlined, to transfer a unit unchanged.

Abide by subsection (b) of this rule when transferring a unit of the Code from one location in the Code to another and making changes to the division, rather than using strike through to delete the division from one location and underline to insert it into another location and to show changes to the division, as this ensures the reader can clearly understand the changes that are being made.

Rule 31. Internal References to Code Provisions or Sections of Legislation: Generally.

(a) Internal references, also called cross-references, may be used for one of several specific purposes:

- (1) To call attention to another provision or its effect on the provision at hand.

Example: . . . as defined in § 123 (where the definition would apply anyway)

- (2) To describe and identify a concept or relationship that is established in another provision.

Examples:

Benefits under § 123. . . .

Any action taken under § 123

The rates in effect under § 123

- (3) To indicate that another provision is to also apply to the provision at hand.

Examples:

Section 123 applies [in this situation]. . . .

The rules that apply under § 123 also apply [in this situation]. . . .

. . . as defined in § 123 (where the definition involved would not otherwise apply)

- (4) To indicate that another provision is to be read as making an exception to or modification of the rules in the provision at hand.

Examples:

Except as provided in § 123

Subject to § 123

The uses described in (1) and (2) are primarily informative; the use described in (3) is substantive and is typically used for incorporation by reference; the use described in (4) can be either substantive or informative.¹³⁵

(b) For internal references to a provision of the Code, use the correct name for the portion of the section's internal hierarchy referenced. *See* Drafting Rule 30(e).

(c) Use an initial capital letter in referring to a specific article of the Constitution or title, part, or chapter of the Code; use lower case in referring to a specific subsection or paragraph.

Examples:

The requirements of Article III

Except as otherwise provided in subsection (b)

(d) Use the section symbol (§) when referring to a section of the Code, unless the section symbol (§) appears at the beginning of a sentence. In that case, use the word "Section". Use an initial capital letter when referring to a Section of a bill (Section 1, Section 2, Sections 1 and 2) regardless of its placement in a sentence.

(e) Internal references to a portion of the same section should be followed up with the words "of this section". Internal references to a portion of the same title should be followed up with the words "of this title". Internal references to a portion of another title should be followed up with the words "of Title [insert number]". Do not direct internal references to the chapter level of any portion of the Code.

Do Not Say: "1 *Del. C.* § 101," "Title 1, Section 101 of the Delaware Code," "Title 1, § 101," "§ 101 of this chapter," or any similar form of internal reference.

Say: "§ 101 of this title" or "§ 101 of Title 1."

¹³⁵ Lawrence Filson & Sandra Strokoff, *The Legislative Drafter's Desk Reference*, 289 (2nd ed., 2008).

(f) Do not write an internal reference such as “subsection (b), above”. What is above today may be below tomorrow. Instead, write “subsection (b) of this section”.

(g) To reference a paragraph, the drafter should begin with the subsection designation and include each paragraph designation prior to, and including, the paragraph to be reference.

Do Not Say: “paragraph (a)(1)” when you want to reference a paragraph lower in the hierarchy.

Say: “paragraph (a)(1)a.1.”; a reference to “paragraph (a)(1)” could mean that paragraph or “(a)(1)a.”, “(a)(1)a.1.”, “(a)(1)a.1.A.”, or “(a)(1)a.1.A.I.”.

Comment

When referencing a few sections, a specific reference is useful because it avoids the need to search the entire piece of legislation to locate the provisions to which reference is intended. But overuse of specific references to other provisions of legislation can make the legislation difficult to read and understand. Moreover, this tool can create issues as sections, subsections, or paragraphs are sometimes changed. When a Code provision has been substantially altered, check internal references to that Code provision, to ensure that no unintended consequences will occur elsewhere due to that amendment. Computer technology has greatly reduced the difficulty of finding and changing internal references.

Rule 32. Internal References to Code Provisions or Sections of Legislation: Incorporation by Reference.

Recognize the positives and the negatives in using a cross-reference for “incorporation by reference”, which are discussed in detail in the Comment.

Comment

Drafters should be aware of the impact an incorporation by reference can have when drafting legislation. Incorporation by reference is recognized by Delaware courts as a valid drafting technique. The courts have held that a statute may, by a special and descriptive “reference[,] adopt a part or all of another statute which will have the same effect as though the adopted statute had been written into it.”¹³⁶ Incorporation by reference is a useful tool because it assures the drafter of uniformity, clarity, and consistency between the provisions while saving space and time.

Also be aware of a conflict between the Code and Delaware case law. Section 307(b) of Title 1 states, “Whenever any reference is made to any portion of this Code or any other law, the reference applies to all amendments thereto.” In 1967, our Supreme Court stated that “the

¹³⁶ *State Ins. Coverage Office v. Choudry*, 2013 WL 3928226, at *4, n.25 (Del. Super.) (citing *Dupont v. Mills*, 196 A. 168, 176 (Del. 1937) and 2A Singer, *Sutherland Statutory Construction*, § 51:7 (7th ed. 2012)).

adopted statute is incorporated as of the time of reference and subsequent amendments to it will have no effect upon the adopting statute.”¹³⁷ This statement encompasses the general, common law rule.¹³⁸ However, § 307(b) was contained within the 1953 Code when the Supreme Court repeated the common law rule, so it is unclear why the Supreme Court made this statement without citing and refuting the substance of § 307(b). A close reading of the case suggests the appellee simply acceded to the Court’s rule. The editors maintain this decision is an outlier and § 307(b) controls, as, seven years later, the General Assembly recodified § 307(b) containing the same legislative interpretation rule in the Delaware Code of 1974.

Rule 32A. Internal References to Code Provisions or Sections of Legislation: Checking for Accuracy.

(a) Check all references, internal and external, for accuracy prior to releasing the draft legislation for introduction.

(b) A corollary to subsection (a) of this rule is to check references elsewhere in the Constitution, Code, or Charter to provisions contained within the draft that may no longer be accurate due to any redesignation done by the draft. Include in the draft legislation additional Constitution, Code, or Charter provisions as necessary to ensure these references remain accurate.

Example

Assume a hypothetical § 101 of the Delaware Code with subsections (a), (b), and (c).

Assume the drafter inserts a new subsection (a) and directs the remaining provisions to be redesignated.

Assume the existing § 101(a) is referenced by 3 other provisions in the Delaware Code, §§ 201(b), 434(d), and 704(e).

The drafter should include §§ 201(b), 434(d), and 704(e) in the draft legislation and change the reference from § 101(a) to § 101(b).

Alternatively, the drafter could add the new subsection as § 101(d) instead of § 101(a) and there would be no need to amend internal references to the existing § 101(a).

¹³⁷ *Powell v. Levy Court of Kent County*, 235 A.2d 374, 375 (Del. 1967) (citing 2 *Sutherland, Statutory Construction*, § 5208 (3rd ed.)).

¹³⁸ *Perkins v. Winslow*, 133 A. 235, 236 (Del. Super. 1926) (citing *Sutherland on Statutory Construction*, § 405). Under the common law rule, when using a specific reference (like “Section 123 applies . . .”), as opposed to a general reference (“in the manner now provided by law”) the incorporated material may essentially be frozen in time upon incorporation. See *Hassett v. Welch*, 303 U.S. 303 (1938) for a discussion by the U.S. Supreme Court on the difference between a specific and general reference.

(c) When creating a new unit of the Code, check all internal references in the new unit of the Code, as the drafting and editing process can alter the meaning of internal references through the deletion or addition of subsections or paragraphs.

(d) Also check all internal references in an existing provision that is amended by the drafter's legislation for the same reason expressed in subsection (c) of this rule.

(e) A drafter should double check references to criminal provisions, as the Code Revisors are least likely to exercise their code revision authority to correct a reference to a criminal provision.

Comment

Drafting Rules 31 and 32 explain why internal references are so important. However, drafters must ensure that internal references continue to accurately reference the intended provisions. The Code Revisors cannot correct an incorrect reference when the drafter's intent is not clear. Therefore, prior to the introduction of the draft legislation, check all references for accuracy. Computer technology has greatly reduced the difficulty of finding and changing internal references and should be used in the proofreading process to check references.

Rule 33. Order of Arrangement of Provisions of Legislation.

(a) Organize legislation in the most useful and logical format for the reader. Avoid an organization that requires an understanding of a later section in order to understand an earlier section.

(b) The following is suggested as the order of arrangement of possible provisions in legislation which creates a new chapter:

- (1) Bill title (mandatory). *See* Part III, Chapter 2, Section 2, B.
- (2) Preamble or "Whereas" clauses. *See* Part III, Chapter 2, Section 2, C.
- (3) Enactment clause (mandatory). *See* Part III, Chapter 2, Section 2, D.
- (4) Short title (The short title may also precede the severability clause.). *See* Part III, Chapter 2, Section 2, S.
- (5) Definitions. *See* Drafting Rule 25 and 26 and Part III, Chapter 2, Section 2, G.
- (6) Scope (exceptions or exclusions, if any).
- (7) Creation of agency or office. *See* Part III, Chapter 2, Section 4, B.
- (8) Administrative and procedural provisions.
- (9) Substantive provisions (State positive requirements in order of time, importance, or other logical sequence.).
- (10) Prohibitions and penalties. *See* Part III, Chapter 2, Section 2, I.
- (11) Severability clause. *See* Part III, Chapter 2, Section 2, P.
- (12) Savings provisions. *See* Part III, Chapter 2, Section 2, L.
- (13) Effective date, Contingent Effective Date, and Applicability Clause. *See* Part III, Chapter 2, Section 2, J. and K.
- (14) Synopsis (mandatory). *See* Part III, Chapter 2, Section 2, T.

Provisions (11), (12), and (13) should be placed in separate bill sections at the end of the bill for inclusion only in the Laws of Delaware and Code Revisor's notes.

(c) Order of arrangement for Code-amending bills:

- (1) Bill title (mandatory).
- (2) Preamble or "Whereas" clauses.
- (3) Enactment clause (mandatory).
- (4) Section(s) of the bill adding or deleting text from the Code.
- (5) Severability or savings clauses.
- (6) Effective date (only if the entire bill is not meant to go into effect upon enactment into law. Never use "upon signature of the Governor" in an effective date section.), Contingent Effective Date, and Applicability Clause.
- (7) Synopsis (mandatory).

Comment

The suggested order of arrangement of provisions is subject to the general requirement that legislation be organized in the format most useful to the reader.

Rule 34. Model Acts.

When using a model act to draft legislation, a drafter must determine all of the following prior to introduction:

- (1) If the model act accomplishes the goals of the sponsor.
- (2) If the model act conflicts with the Delaware Constitution and, if it does, if the conflict may be resolved.
- (3) If the model act conflicts with existing Delaware law and, if it does, if the conflict may be resolved.
- (4) If the sponsor wants the model act modified (1) to comply with the substance and style of Delaware law; (2) as little as possible; (3) at all.
- (5) Where in Delaware law the model act belongs.
- (6) If the model act may be enforced or administered by an existing state agency or if the model act requires the creation of a new state agency.
- (7) If there are problems with the model act's definitions that need to be resolved. Model acts may suggest definitions that are at odds with existing definitions in Delaware law. Search of Delaware law for conflicts and determine how to resolve them.
- (8) If the model act is organized to put similar concepts together and separate concepts that are not similar.
- (9) If all issues left to enacting states are resolved. Model acts often include alternative language for states to choose from. Decisions on these alternatives must be addressed prior to introduction.
- (10) If unnecessary language in the model act has been deleted. Model acts often include "blanks" to be filled in by each state. To avoid embarrassment to the sponsor and the drafter, do not introduce legislation with these "blanks" still in the legislation.

- (11) If gaps in the legislation have been filled in. Model acts may create agencies or set standards without providing for the duties of the agency or how standards are to be enforced. Fill in these gaps.
- (12) If the language of the act has been modified to match the substance and style of Delaware law, if permitted by the sponsor. Many references, including those to crimes, government entities, and penalties, may not be consistent with those used in Delaware laws and should be altered to fit the sponsor's circumstances.

Rule 35. Proofreading.

- (a) One of the most important steps in drafting legislation is to proofread the legislation prior to releasing it for numbering and printing.
- (b) Have someone who has not been involved in the drafting of the legislation proofread it prior to releasing it for numbering and printing.
- (c) Proofreading must consist of checking the legislation for conformity with the accepted formatting, style, and grammar rules in this manual and other generally accepted rules for style and grammar. Additionally, read the legislation for obviously missing words or wrong words; spell check will not catch either.
- (d) Check every reference, internal and external, for accuracy.
- (e) When amending the Constitution or Code, ensure that the context language accurately reflects the current version of the Constitution or Code.
- (f) Proofreading entails checking the draft legislation for conflicts with introduced but not yet enacted legislation, and correcting those conflicts if possible. Also be aware of other legislation subsequently introduced, which may cause a conflict with the legislation you drafted.

Comment

Proofreading may be the last substantive step performed prior to releasing the legislation to the public, but it is the most important. Proofreading serves as a final check to ensure accuracy, clarity, and uniformity of the legislative product. Proofreading also enables the drafter to correct mistakes that may slow down or even kill legislation.

It is essential that someone other than the drafter review the legislation prior to release. An independent proofreader may better be able to focus on what the draft legislation actually says, rather than on what it is intended to say.

Do not skim the legislation. Skimming is not proofreading. One will not catch missing or extraneous words or nonsensical phrases by skimming the legislation.

See Drafting Rule 32A for more discussion of the importance of proofreading references.

As discussed in Part II, Chapter 3, use the most up-to-date legal materials in preparing draft legislation. The legal materials published online by the Division of Research are the most accurate, up-to-date legal materials available to a drafter and should be used over any other source. Because draft legislation can come from many sources, including draft or introduced legislation from previous General Assemblies, take the time to compare any draft legislation to the current version of the legal material in the legislation and correct any issues prior to releasing the draft legislation for introduction. This prevents issues that can, and all too frequently do, arise when the draft legislation conflicts with the existing legal material language, and may ultimately result in enacted legislation that is incapable of being harmonized with the existing legal material language.

Just as out-of-date legal materials can cause issues with harmonizing the legislation with the existing legal material language, so too can conflicting legislation. Therefore, prior to release check for introduced legislation that conflicts with the draft legislation. And, follow the progress of the draft legislation once it is introduced to determine if new legislation is introduced that could create a conflict.

CHAPTER 3: ADDITIONAL OBSERVATIONS, GUIDELINES, AND WORD USAGE EXAMPLES.

Section 1: Additional Observations.

(1) Before beginning to draft a bill, try to find if a similar or conflicting law already exists in current federal or Delaware constitutional or statutory provisions.

(2) It is not necessary to use the 1897 date or the term “as amended” when referring to the Delaware Constitution or the 1974 date or the term “as amended” when referring to the Delaware Code.

(3) Certain words that are frequently misspelled but are not detected by Word’s spell check function include:

| | |
|------------------|----------------------------|
| be / he | phase / phrase |
| change / charge | pubic for public |
| county / country | saws for laws |
| from / form | statue for statute |
| it / is | undeserved for underserved |
| or / of | untied for united |
| or / on | |

(4) The Enrolled Bill Doctrine holds that, once a bill passes a legislative body and is signed into law, the courts should assume that all rules of procedure were properly followed. The Delaware Supreme Court, however, has broadened the application of the Enrolled Bill Doctrine by holding that “clear and convincing evidence established by constitutionally required journals may be admissible when the validity of a statute defective on its face is under consideration.”¹³⁹

(5) The phrase “this Act” is a term of art which has a specific meaning in bill drafting. When language in a bill refers to “this Act”, it means every provision in the bill. If language in a bill refers to “this title” it refers to the title of the Code in which the section is placed. In bills or bill Sections creating new provisions for the Laws of Delaware, reference should be to “this Act”, not “this title”.

(6) Double-check section (§), chapter, and title references, especially when resurrecting a bill from a previous General Assembly. A section (§) number usually indicates the chapter of which it is a part (thus, § 101 is the first section of Chapter 1), but not always. For example, Chapter 5 of Title 11 contains sections beyond the 500s; Chapter 1 of Title 26 contains sections beyond the 100s; and Chapter 1 of Title 8 contains beyond the 100s.

¹³⁹ See *Wilmington Sav. Fund Soc. v. Green*, 288 A.2d 273, 277 (Del. 1972) (holding that when a bill with less than a constitutionally mandated vote requirement on its face passes, the Court will check the Journals to see if it actually received the correct number of votes to pass.).

(7) Another drafting problem occurs when the drafter is perhaps too busy to search out the appropriate place in the Code for a newly drafted provision. Rather than placing the new legislation with statutes relating to the same subject, sometimes a drafter designates the section as a whole new chapter, or places the new legislation at the end of a chapter without regard to its proper place in the Code or chapter. Both practices are unacceptable and are likely to cause unnecessary obstacles for researchers.

(8) Carefully review proposed legislation that originates in other State agencies or in the private sector. Outside drafters often are not lawyers and not aware of the rules and guidelines for legislative drafting. Furthermore, even lawyers who do regularly draft legislation may produce bills that need technical editing.

Section 2: General Guidelines for Drafting.

| AVOID USING REDUNDANT COUPLETS | |
|---------------------------------------|-------------------------|
| actual knowledge | final and conclusive |
| adjudge, determined, and decreed | full and complete |
| alter and change | full force and effect |
| among and between | made and entered into |
| any and all | necessary or desirable |
| authorize and direct | null and void |
| authorize and empower | order and direct |
| by and with | over and above |
| constitute and appoint | power and authority |
| desire and require | shall have and exercise |
| each and all | sole and exclusive |
| each and every | type and kind |
| evidence, documentary and otherwise | unless and until |
| fail, refuse, and neglect | |

| AVOID THE FOLLOWING INDEFINITE WORDS | |
|---|--|
| aforementioned | heretofore |
| aforesaid | herewith |
| and/or (say "A" or "B", or both) | said (as a substitute for "it", "he", "she", etc.) |
| before (as an adjective) | same (as a substitute for "it", "he", "she", etc.) |
| before-mentioned | to wit |
| hereafter | whatsoever |
| hereby | whenever |
| herein | wheresoever |
| hereinabove | |

| USE PLAIN ENGLISH | |
|---|--|
| Questionable, superfluous, or verbose | Consider using instead |
| absolutely null and void and of no effect | void |
| accorded | given |
| adequate number of | enough |
| adjudged, ordered and decreed | adjudged |
| admit of | allow |
| afforded | given |
| among and between | among (for more than two), between (for two) |
| anticipate | expect |
| approximately | about |
| ascertain | learn, find out |
| at the place | where |
| at the same time | when |
| attempt (as a verb) | try |
| by means of | by |
| by virtue of | under, because |
| category | kind, class, group |
| cause it to be done | have it done |
| cease | stop |
| cognizant of | aware, knew |
| commence | begin, start |
| complete (as a verb) | finish |
| component | part |
| conceal | hide |
| consequence | result |
| constitute and appoint | appoint |
| contiguous to | next to, abutting |
| corporation organized and existing under the laws of Delaware | a Delaware corporation |
| different than | different from |
| do and perform | do |
| does not operate to | does not |
| during such time as | while |
| during the course of | during |
| each and every | each |
| effectuate | bring about, carry out |
| endeavor (as a verb) | try |
| enter into a contract with | contract with |
| evidence, documentary and otherwise | evidence |
| evinced | show |
| except that | but |
| excessive number of | too many |
| expend | spend, disburse |

| Questionable, superfluous, or verbose | Consider using instead |
|--|---|
| fail, refuse, and neglect | fail |
| final and conclusive | either word, as appropriate |
| for the duration of | during or while |
| for the purpose of holding (or other gerund) | to hold (or comparable infinitive) |
| for the reason that | because |
| forthwith | immediately |
| frequently | often |
| from July 1 | after June 30 |
| full and complete | full |
| full force and effect | effect |
| give consideration to | consider |
| have knowledge of | know |
| hereafter | after this ... takes effect |
| heretofore | before this ... takes effect |
| however or provided | if, unless, or state the condition |
| in a case in which | when, where |
| in accordance with | under, by |
| in case | if |
| in excess of | more than |
| in order to | to |
| in the amount | totaling |
| in the event that | if |
| in the interest of | for benefit of |
| in the manner of | how, method |
| indicate (in the sense of show) | show |
| inquire | ask |
| in Sections 2023 to 2039 inclusive | in §§ 2023 through 2039 |
| institute | begin, start |
| interrogate | question |
| in the case of | whenever (only when emphasizing the exhausting or recurring applicability to the proposition) |
| in the event that | if |
| in the interest of | for |
| is able to | can |
| is applicable (shall be) | applies |
| is authorized and directed | shall |
| is authorized to | may |
| is binding upon | binds |
| is directed | shall |
| is entitled (in the sense of has the name) | is called |
| is unable to | cannot |
| it is the duty | shall |

| Questionable, superfluous, or verbose | Consider using instead |
|--|--|
| it shall be lawful to | may |
| law passed | law enacted |
| make application | apply |
| make payment | pay |
| make provision for | arrange, provide |
| manner | way, method |
| modify | change |
| necessary or appropriate | necessary |
| necessitate | require, need |
| negotiate | make, deal |
| no later than June 30 | before July 1 |
| nor | or (do not misuse “nor”, “for”, “or”, after a negative expression) |
| numerous | many |
| obtain | get |
| occasion (as a verb) | cause |
| of a technical nature | technical |
| of each year | annually |
| on his or her own application | at his or her request |
| on the part of | by |
| opt for | choose |
| optimum | best |
| or, in the alternative | or |
| over and above | exceed |
| paragraph (5) of subsection (a) of §2097 | § 2097(a)(5) |
| party of the first part | (the party's name) |
| per annum | per year |
| per centum | percent |
| period of time | period, time |
| portion | part |
| preceding | before |
| preserve | keep |
| proceed | go, go ahead |
| procure | obtain, get |
| prosecute its business | carry on its business |
| provided that | if, unless, or but |
| provision of law | law |
| purchase | buy |
| remainder | rest |
| render (in the sense of give) | give |
| render (in the sense of cause to be) | make |
| require (in the sense of need) | need |
| retain | keep |

| Questionable, superfluous, or verbose | Consider using instead |
|---|---------------------------------------|
| shall be construed to mean | means |
| sole and exclusive | either word, as appropriate |
| specified (in the sense of expressly mentioned or listed) | named |
| State of Delaware | “Delaware” or “this State” |
| subsequent | later |
| subsequent to | after |
| successfully completes or passes | completes or passes |
| suffer (in the sense of permit) | permit |
| sufficient number of | enough |
| summon | send for, call |
| The Congress | Congress |
| the manner in which | how |
| to the effect that | that |
| under the provisions | under |
| unless and until | either word, as appropriate |
| until such time as | until |
| utilize, employ (in the sense of use) | use |
| when | if |
| where | in which |
| with reference to | as to, regarding, for |
| with the object of changing (or other gerund) | to change (or comparative infinitive) |

Section 3: Word Usage Examples.

This section offers the drafter word usage examples for correct capitalization, compounding, hyphenation, and spelling for words frequently used within the Code. These examples have been provided by LexisNexis, the publisher of the Code, and were created in conjunction with and are used by the Code Revisors in the codification process. To the extent possible, drafters should follow these examples in drafting legislation to aid the Code Revisors in maintaining uniformity within the Code.

Additionally, this section includes a discussion on drafting words with similar spellings that are frequently confused.

A. Capitalization Examples.

act, unless part of a named act or referred to as “This Act”

a.m.

armed forces

Associations (considered a proper name when specific one, lowercase when used as adjective)

Bill of Rights

Chapter 29, but “of this chapter” when part of an internal reference

Class I

class A felony

Code (when referring to the Delaware Code)

code (when referring to the Criminal Code, etc.)

Committees (when full name given)

compact (lowercase generally and in section catchlines, capitalize if part of a named compact)

Constitution (capitalize in “Constitution, article X, § 1” or “§ 2, article X of the Constitution of this State” and “Constitution of Delaware”; but lowercase “federal constitution”)

County or Counties (capitalize when specific, lowercase when used as adjective)

County Agencies, Boards, Commissions, Departments or Officials of a specific county are capitalized if identifying the office or board in such a way as to name it as a proper title of office; otherwise it is lowercase.

Example:

“Kent County Comptroller” or “Comptroller of Kent County”

But “the comptroller in Kent County”

And “comptroller” (even if the section limits itself to one county, earlier in the section)

Courts (as in “Supreme Court”) are capitalized and the word “Court” is capitalized if referring back to a particular Court, otherwise it is lowercase.

Criminal Code

Delaware Code

Delaware Code Revisors

Dover Air Force Base

federal government

Fourteenth Amendment

Fund (capitalized when referring to the proper name of a fund)

General Assembly

Do Not Say: “legislature” or “The Legislature”

Say: General Assembly

Chamber (when referring to either Senate or House of Representatives)

Internet

justice of the peace

Justice of the Peace Court; Justices of the Peace Courts

Municipal Home Rule Amendment

national consumer price index average

non-Delaware

non-state-aid

office (lowercase as in “office of the Secretary of State”)

officers of private associations and corporations

Organizations (considered a proper name when specific one, lowercase when used as adjective)

Part V, but “of this part” when part of an internal reference

p.m.

provided (lowercase following semicolon)

Rules (of Procedure) of Court of Chancery

State (capitalized when referring to “State of Delaware”, lowercase when used as adjective. May use “State” to refer to “State of Delaware” unless it would be confusing, then should add “of Delaware.”)

State and federal Agencies, Boards, Commissions, Departments, Officers, etc., are capitalized if identifying the office or board in such a way as to name it as a proper title of office; otherwise it is lowercase.

statewide

Subchapter I, but “of this subchapter” when part of an internal reference

that (lowercase when following “Provided”)

Title 14, but “of this title” when part of an internal reference

United States government

B. Compounding, Hyphenation, and Spelling Examples.

| | |
|------------------------|--|
| above mentioned | endorsement |
| above-mentioned (adj.) | engine-driven aircraft |
| after-born (adj.) | ex officio |
| attorney-at-law | fire boss |
| attorneys' fees | fire fighters |
| barbershops | fire-fighting apparatus |
| beehive, beekeeper, | fore-and-aft position |
| beekeeping | fortunetelling |
| barroom | full-paid |
| boardinghouse | full-time (adj.) |
| boreholes | gas-bearing (adj.) |
| bullfrogs | gill net |
| bylaws | grants-in-aid |
| by-products | hard-shell (adj.) |
| canceled | head lamps |
| checkup | head-on (adj.) |
| coal-cutting (adj.) | head on (adv.) |
| coastline | heirs at law |
| co-chair | in no wise |
| co-defendant | inservice education |
| co-heirs | insofar |
| co-indorsers | land books |
| coin-operated | landmark |
| common-law court | landowners |
| cooperate | last known |
| co-tenant | law-enforcement officer |
| courthouse | layoff |
| court-martial | instead |
| cover-up | livestock |
| crab pot | loose-leaf (adj.) |
| crossbars | low-income housing |
| crossbill | man-made |
| crosscut | moneys |
| cross-examination | motorboat |
| cross mark | motor-driven (adj.) |
| daytime | next-of-kin |
| day-to-day operation | nighttime |
| decision-making | <i>non</i> (prefix forms one word—except “non-state-aid” or when word it modifies is capitalized as in “non-Delaware”) |
| decision maker | nonjudicial |
| dragnet | nonmembers (and other similar words) |
| eastbound | nonprofit |
| eastern standard time | nonresident |
| eFile eFiling | |
| e-mail | |

non-State (if somehow not an adjective;
 non-state if an adjective)
 noon, midnight
 nowise
 officeholder
 one half (n.)
 one-half (as modifier)
 one half of 1 percent
 out-of-state
 overdraft
 overproduction
 overripe
 paid-up stock
 pari-mutuel
 part-time (adj.)
 passbook
 payroll
 percent
 pipeline
 poolrooms
 postmortem
 post office (n.)
 post-office address
 post-office department
 postpaid
 privately owned
 pro rata
 rearrest
 recordkeeping
 reelected
 reemployment
 reenactment
 reenlistment
 reenters
 re-label
 repayments
 reregistration
 right-of-way (rights-of-way, right-of-ways)
 safe-deposit (adj. & n.)
 safekeeping
 sawlogs
 seafood
 secretary-treasurer
 semiannually
 semitrailer
 setoff (adj. & n.)

set off (verb)
 short-term
 sidetrack
 SOS
 state-supported
 statewide (adj. & adv.)
 steamboat
 stepchild
 subcommittee
 subspecies
 tail lamp
 taillight
 takeoff (n.)
 10-day
 10 days' service
 theater
 timberland
 toll roads
 tort-feasor
 to wit
 trademark (n. & verb)
 trawl-net
 12-month period
 two-thirds majority
 underway
 vice chair
 vice-president
 vice principal
 vocational-technical high school
 watermark
 website
 well-being
 well-settled rule
 wilful, wilfully
 write-in vote
 X ray (n.)
 X-ray therapy

C. Words Frequently Confused.

1. **Affect v. Effect.**

- a. *Affect* is both a noun and a verb. When used as a noun it means “feeling” or “emotion”. When used as a verb it conveys action against or upon a person, or influence.
- b. *Effect* is both a noun and a verb. When used as a noun it means that which is brought about as a result or an impression. When used as a verb it conveys accomplishment or achievement of a result.

2. **Biannual v. Biennial.**

- a. *Biannual* means twice a year. Use “semiannual” instead.
- b. *Biennial* means every other year.

3. **Capital v. Capitol.**

- a. *Capital* means capital city, money or assets, first-rate, related to physical improvements.
- b. *Capitol* means the statehouse.

4. **Continual v. Continuous.**

- a. *Continual* means frequently recurring. It refers to time and implies close succession.
- b. *Continuous* means uninterrupted. It refers to time and space and implies continuity.

5. **Considered v. Deemed.**

- a. *Considered* means treating something as true because it is true.
- b. *Deemed* means treating something as true, even if it is contrary to fact.

6. **Ensure v. Insure v. Assure.**

- a. *Ensure* means to make certain or guarantee.
- b. *Insure* means to procure insurance for something or to make certain. NOTE: To avoid ambiguity, use “insure” in drafting only when you are discussing insurance.
- c. *Assure* means to try to increase another’s confidence, to make certain, or to remove doubt from a person’s mind.

7. **Farther v. Further.**

- a. *Farther* pertains to actual distance.
- b. *Further* means additional, more advanced.

8. **Partially v. Partly.**

- a. *Partially* means in some degree (when speaking of a condition or state).
- b. *Partly* means in part.

9. Principal v. Principle.

- a. *Principal* is both a noun and an adjective. When used as a noun it means a controlling authority, employer, head officer of a school, or sum of money. When used as an adjective it means most important.
- b. *Principle* means a fundamental law, fact, or assumption.

10. Therefor v. Therefore.

- a. *Therefor* means in place of, for that, for it. In drafting, use one of those synonyms instead of “therefor.”
- b. *Therefore* means a conclusion, consequently, hence.

PART VII: THE LEGISLATIVE PROCESS.

While finalizing the draft legislation may be the end of the drafting process, it does not mean that the drafter's involvement is complete, as the legislative process has just begun. The legislative process from the draft's release to codification has implications for the drafting process. The following chapters explore that process and, where pertinent, discuss where the drafter's participation may be required and how an accurate, clear, and uniform legislative product can reduce the need to involve the drafter in the process.

Chapter 1: Draft Release, Numbering, Printing, and Preparation.

Once legislation is released, the drafter loses control over the legislation and the ability to alter it without either the sponsor striking it or the sponsor or another legislator amending it. This underscores the importance of ensuring the legislation is accurate, clear, and uniform prior to release. In the fast paced world of Legislative Hall drafters, **proofreading is key** to safeguarding against many problems with the legislation in the course of the legislative process.

Once the drafter has released legislation in DELIS, the Secretary of the Senate ("Secretary") or the Chief Clerk of the House ("Chief Clerk") may view it, depending on the Chamber for which the legislation is drafted. At this point, the Secretary or Chief Clerk assigns a number to the legislation. The Print Shop may now view the legislation in DELIS.

After numbering, the Print Shop prints the bonded copies of the legislation and the required number of regular copies. When printing is complete, Bill Prep in the appropriate Chamber can view the legislation in DELIS.

Bill Prep collects the bonded and regular copies of the legislation from the Print Shop. Bill Prep prints the "backers" for the bonded copies of the legislation. Backers are required under Senate and House rules.¹⁴⁰ One backer is the original, which is used to document the prime sponsor, co-prime sponsors, or co-sponsors¹⁴¹ of the legislation and each step of the legislative process. In particular, the original backer provides space to note the actions in each Chamber including: first reading of the legislation, committee action, amendments, and the vote on third reading. The original backer also records the certification of the Secretary and Bill Clerk or Chief Clerk and Bill Clerk when passed in one Chamber.

House Rule 19(a) and Senate practice require the signatures of all legislators who are listed as the sponsors. When the backers are prepared, Bill Prep is responsible for gathering these signatures. It is not required that this process be completed prior to introduction of the legislation.

At this point, the legislation is placed on the "Consideration List" in its Chamber of origin.

¹⁴⁰ Senate Rule 8(a) and House Rule 18(a).

¹⁴¹ But see House Rule 19(f), which states that a "joint sponsor" is a person whose name is printed on the measure after the name of all prime and co-prime sponsors and a "co-sponsor" is a person whose name is not shown on the measure but signs the backer.

Chapter 2: Action in the Chamber of Origin.

After release, numbering, printing, and preparation, the legislation is ready for consideration and action in the Chamber of origin, beginning with the introduction of the legislation. In each Chamber, legislation may be introduced in one of two ways: either from the floor while the Chamber is in session or through inclusion in what is known as “the prefile” prior to session beginning.¹⁴² The vast majority of legislation is introduced through the prefile.

Introduction through either method constitutes the first reading of the legislation. Once introduced, the legislation is handed out to legislators and is publicly available in electronic form on the General Assembly’s website and in hard copy from the Division of Research’s Bill Room on the ground floor of Legislative Hall.

With introduction normally comes committee assignment for all bills and joint resolutions. Simple and concurrent resolutions are not required to be assigned to committee. The President Pro Tem in the Senate and the Speaker in the House decide, in their respective Chamber, which committee to assign a bill or joint resolution. Typically, a bill or joint resolution is assigned to the committee dealing with oversight for the title of the Code to be amended or the predominate subject matter of the legislation.

Committee meetings in both Chambers are held on Wednesdays when the General Assembly is in session. Senate and House rules require that a notice be posted on the Thursday before a committee meeting detailing the time and location for the meeting (and future meetings) and the committee agenda, including legislation to be considered and other announcements.¹⁴³ Items may be added to the agenda after it is posted.

Committee meetings are generally held in Legislative Hall and are open to the public. The prime sponsor of the legislation may be available to explain the legislation and answer questions along with representatives of any agency or entity impacted by the legislation. Comments from the public are also accepted. The drafter may be present at the sponsor’s request to answer questions.

Senate Rule 20(e) provides that a quorum does not have to be present to constitute a committee meeting. However, House Rule 32 requires a quorum of four members, or a majority of the members of the committee, whichever is less.

Legislation is acted on within the committee by motion to release or to table the legislation. While a motion to release may be made and a vote on such motion may be taken, at the committee meeting, the legislation may not be reported out of the committee until a majority of the members of the committee have signed the backer.¹⁴⁴ House Rule 35(a) states that legislation may be tabled in committee by a majority vote of the full committee.

¹⁴² See Senate Rule 9(e)A, B(1), and C(1); House Rule 19(b)(1)-(2).

¹⁴³ Senate Rule 20(c) and House Rule 34(b).

¹⁴⁴ Senate Rule 20(e) [and Senate practice] and House Rule 35(a).

NOTE:

The vote on a motion to release legislation from committee and the signatures required to actually release the legislation should not be confused with the opinions of the legislators on the legislation reflected in the “Favorable,” “Merits,” or “Unfavorable” “vote” shown on the original backer or on committee reports on the General Assembly’s website.

If a majority of the committee members sign the original backer, the legislation is released from committee. The act of signing is the vote to release. The legislator’s selection of “Favorable,” “Merits,” or “Unfavorable” is simply an opinion that does not impact the legislation’s release. Legislation could conceivably be released with the majority of the committee signing the backer and indicating an “Unfavorable” opinion.

Both Senate and House rules require that minutes be kept by each standing committee.¹⁴⁵ The minutes usually contain a list of those in attendance at the meeting, the results of committee votes taken, and comments from those present. Minutes for the current legislative session are published on the General Assembly’s website. Minutes for prior sessions are available from Public Archives.

An amendment to legislation may be technical or substantive. These amendments are not added by the committee, but the release of legislation can be conditioned on the promise of an amendment.¹⁴⁶

Both Senate and House rules provide that legislation shall be acted on within 12 legislative days after being assigned to committee.¹⁴⁷ Any action, such as tabling the bill, suspends the clock. After that time, the legislation may be petitioned out of committee.¹⁴⁸ The petition process has not been used within memory of the Secretary or Chief Clerk.

If the legislation is released from committee, the committee report is read by the Secretary or Chief Clerk during session, indicating the legislation is released and the opinions of the committee. This constitutes the legislation’s second reading. The legislation is now placed on the Ready List and may be added to an Agenda.

In the Senate, the Agenda is set based on requests by the prime sponsor of Senate legislation or the floor manager of House legislation (typically the chair of the committee it is reported from or the Senate co-prime sponsor). In the House, the Agenda is set by the Speaker from items on the

¹⁴⁵ Senate Rule 20(d) and House Rule 34(c).

¹⁴⁶ House Rule 35(d) indicates a committee chair can offer an amendment to legislation from the committee that will take precedence over all other amendments and if the amendment fails, the Speaker may reassign the legislation to committee.

¹⁴⁷ Senate Rule 20(a) and House Rule 35(b).

¹⁴⁸ Senate Rule 16 and House Rule 25.

Ready List that have been requested to be placed on the Agenda by the prime sponsor of House legislation or the floor manager of Senate legislation (typically the House co-prime sponsor, if none, the chair of the committee it is reported from).¹⁴⁹ Even if legislation is added to an Agenda, it is important to remember that the Majority Leader runs the Agenda on the floor in each Chambers and can chose, for numerous reasons, not to work legislation even if it is on the Agenda.

When legislation on an Agenda is worked, it is read for the third time. It is during the third reading that the legislation is considered for final passage out of that Chamber. The drafter may be expected to be available for questions from legislators during floor debate on the legislation.

While amendments may be placed with the legislation in a Chamber any time prior to third reading, the amendments are only acted on when the legislation is considered for final passage. Although legislation may need to be amended, a good drafter can reduce the need for technical amendments by following this manual and submitting the legislation for proofreading.

Any member of a Chamber may introduce an amendment to any House or Senate Bill in that Chamber. No amendment becomes part of a bill unless that Chamber, by majority vote, agrees to the amendment. In the Senate, amendments are attached to the legislation with the consent of the majority of the members as determined by a roll call vote, which is available on the General Assembly's website. In the House, the process is typically completed by a voice vote for technical amendments and non-controversial substantive amendments; however, a roll call vote may be requested by any member.¹⁵⁰ While the Senate has no rules on when an amendment needs to be introduced, the House requires that substantive amendments be prefiled and allows technical amendments to be introduced from the floor.¹⁵¹ If an amendment will substantially change legislation, the Speaker may reassign the legislation to committee.¹⁵² In the House, amendments are considered in numerical order, except that amendments to an amendment are considered prior to the adoption of the amendment it is amending.¹⁵³

In both the Senate and the House, the vote for final passage is taken by a roll call vote, the results of which are available on the General Assembly's website. The Constitution requires that, for the passage of bills and joint resolutions, a quorum be present and have the concurrence of a majority of the members elected to the Chamber, unless the Constitution requires another vote type (discussed in Part III, Chapter 2, Section 4, A, discussing Super-majority Vote Requirements.). As it relates to the quorum requirement, the Delaware Supreme Court has held that "a majority of the members elected to the Chamber" means "a majority of that [Chamber] prescribed by law, irrespective of whether or not one or more vacancies have occurred by reason of death, resignation, or otherwise."¹⁵⁴ The number of members provided by law in the Senate is 21 and in the House is 41, thus, a majority is 11 in the Senate and 21 in the House, irrespective of deaths, resignations, or otherwise.

¹⁴⁹ House Rule 10.

¹⁵⁰ House Rule 39(d).

¹⁵¹ House Rule 23(a).

¹⁵² House Rule 23(d).

¹⁵³ House Rule 23(g).

¹⁵⁴ *Opinion of the Justices*, 251 A.2d 827 (Del. 1969).

Chapter 3: Action in the Second Chamber.

Once legislation has passed the Chamber of origin, it is transmitted to the second Chamber where the process discussed in Chapter 2 is repeated.

While in the second Chamber, the legislation is shepherded by a floor manager who may be either the co-prime sponsor in the second Chamber or the chair of the committee the legislation is assigned to in the second Chamber. When the legislation reaches third reading, it may be amended just like in the Chamber of origin. If the legislation passes without an amendment in the second Chamber, it has passed the General Assembly and will be prepared for delivery to the Governor. If the legislation passes with an amendment, it must return to the Chamber of origin.

Chapter 4: Additional Action in the Chamber of Origin or Second Chamber.

Unlike Congress and the legislatures of some other states, the General Assembly does not use conference committees. Thus, if the second Chamber places an amendment on legislation, the legislation returns to the Chamber of origin for additional action. At this point, the legislation is not required to be heard in committee in the Senate. Instead, it can be heard any time after being placed on an agenda.¹⁵⁵ In the House, the Speaker chooses whether to place a House Bill as amended by the Senate on an agenda or into committee.¹⁵⁶ If the legislation passes without further amendment, it has passed the General Assembly and will be prepared for delivery to the Governor. Where the legislation passes with another amendment, it must return to the second Chamber.

Chapter 5: Engrossment.

Engrossment is the process by which legislation is updated to incorporate amendments made to legislation as the legislation progresses through the General Assembly. The Division of Research is responsible for engrossing all legislation. If an amendment passes, but the legislation does not, the legislation will not be engrossed.

The engrosser's job is to follow the instructions contained within the amendment to alter the legislation being amended. Therefore, it is vital that a drafter consider and properly craft those instructions when drafting an amendment. Some important considerations for amendment drafters are:

- (1) Ensure references to line numbers in the original bill are accurate. Inaccurate line number references may result in amendatory language being improperly placed.
- (2) Proofread instructions to delete certain lines or text and replace with specified lines or text, to ensure that harmony is maintained between the legislation and the amending text. Instructions calling for too much or too little deletion can result in amendatory language not harmonizing with the existing legislation.

¹⁵⁵ Senate Rule 9(g).

¹⁵⁶ House Rule 45(c).

- (3) Multiple amendments added to legislation can lead to chaos from in engrossing, especially when multiple drafters are involved. This is especially true when multiple amendments instruct changes be made to the same language in the existing legislation or when amendments add more than one of the same type of bill Section to a bill (as in an effective date provision).

Failure to consider this information may result in the amendment being unengrossable by the engrosser. If the legislation has passed both Chambers, it may also not be possible for the Code Revisors to codify the amendment.

Keep in mind that amendments are typically considered by the Chamber in numerical order. The engrosser will engross amendments in the order in which they passed. If a conflict arises and amendments are irreconcilable (incapable of being read together and giving effect to each), the later amendment will prevail over the previously adopted amendment.

In addition to simply following instructions the engrosser will, when possible, notify the drafter of issues with grammar, style, structure, conflict, or when the amendment is unengrossable.

An engrossment is only available to Division of Research drafters until the underlying legislation passes both Chambers. Once that occurs, the engrossed legislation is released to the public. The engrossment is available on the General Assembly's website and in the Legislative Information Office, also known as the Bill Room, of the Division of Research. Additionally, bonded copies are prepared and delivered by the Division of Research to the Secretary or Chief Clerk, as appropriate. The engrossment is provided as a courtesy to the Governor within the original backer when it is delivered to the Governor. The engrossed legislation has no official status as it is the original legislation with its amendments that is acted upon by the Governor. However, the codifiers at Lexis and the Code Revisors rely on engrossments as the source for amending the Code.

When legislation is engrossed, line numbers and synopsis are removed; however, the sponsorship list remains. The sponsorship list will be removed when the legislation is published in Laws of Delaware.

Chapter 6: Enrollment.

Once a bill or joint resolution has passed both Chambers it is prepared for transmission to the Governor. In many states, this process involves putting the legislation into its final format through a process called enrollment. In Delaware, this process is managed by the Secretary for Senate legislation and the Chief Clerk for House legislation. The Secretary or Chief Clerk begin by confirming that the backer is properly constituted by checking to ensure that all sponsors have signed the legislation, that the backer is properly documented, and that the proper signatures and seals are placed on the backer. A "governor's backer" is then prepared. This backer contains the signatures of the Speaker and President Pro Tem and certifies that the legislation has properly passed the General Assembly. If the legislation was amended, a bond copy of the engrossment is also attached. Once the process is complete, the legislation is then presented to the Governor for action.

Chapter 7: The Role of the Governor.

Article III, § 18 of the Delaware Constitution controls the process once legislation is presented to the Governor. For purposes of this chapter, and for this section of the constitution, legislation is defined as every bill, order, resolution, or vote to which the concurrence of both Chambers of the General Assembly is necessary, except those matters dealing with internal or administrative affairs of the General Assembly. Section 18 provides that the Governor may approve or veto such legislation. If approved, the legislation becomes law. If vetoed, the Governor must return the legislation to the Chamber in which it originated. The Chamber of origin may reconsider the legislation. If three-fifths of the members of that Chamber agree to pass the legislation, it is then sent to the other Chamber. If three-fifths of the members of the other Chamber agree to pass the legislation, it becomes law without the Governor's signature.

Section 18 provides that the Governor must sign or veto a bill within 10 days of presentment, excluding Sundays. If the Governor does not act within that time, then the bill becomes law as if the Governor signed it. The section contains an exception to this rule, which states that the rule does not apply if "the General Assembly shall, by final adjournment, prevent [the bill's] return, in which case it shall not become a law without the approval of the Governor."

Governor's Choices Under Article III, § 18:

1. Sign the legislation within 10 days, Sundays excepted (when signed, the legislation becomes law); or
2. Ignore the legislation for more than 10 days, Sundays excepted (when ignored, the legislation becomes law as if the Governor had signed it); or
3. Veto and return the legislation within 10 days, Sundays excepted, to the Chamber of origin (if vetoed and returned, the legislation becomes law only if three-fifths of the members of each Chamber re-approve it).

Relatedly, if the General Assembly is in "final adjournment," the Governor may exercise the "pocket veto" power as "[n]o bill shall become law after the final adjournment of the General Assembly, unless approved by the Governor within thirty days after such adjournment." "Final adjournment" has been interpreted by the Delaware Supreme Court to mean only "the final adjournment of the second regular session of a General Assembly."¹⁵⁷ And, that final adjournment occurs by the "adjournment sine die of the second regular session, or, in the absence of such adjournment, the extinguishment of the particular General Assembly by reason of the expiration of the terms of office of the members, whichever is earlier in point of time."¹⁵⁸

¹⁵⁷ *Opinion of the Justices*, 405 A.2d 694, 698 (Del. 1979) (quoting *Opinion of the Justices*, 175 A.2d 543, 545 (Del. 1961)).

¹⁵⁸ *Id.* (And, the Supreme Court, in *Opinion of the Justices*, 330 A.2d 764, 768 (Del. 1974), stated that the terms of office of members begins on the day next after their election, so the terms of those previously holding the position expire simultaneously.).

Therefore, it is now practically impossible for the Governor to use the pocket veto power because the Chambers each recess to the call of the Chair rather than adjourn *sine die*.¹⁵⁹

NOTE:

While not directly related to the Governor's role in the legislative process, the discussion of "final adjournment" raises the following points:

1. Article II, § 4 states that a legislative session "shall not extend beyond the last day of June" unless certain procedures are followed. This does not make the last day of June the day of final adjournment. Section 4 allows the General Assembly to stop its procedures at midnight on June 30th and continue by mutual call of the presiding officers of both Chambers. See *Opinion of Justices*, 405 A.2d 694, 699 (Del. 1979).
2. When the General Assembly is "recessed to the call of the Chair" it does not mean, or result in, an adjournment *sine die* or end of the legislative session, even though no date certain is specified for reconvening. See *State ex. rel. Battaglia v. Delaware Department of Elections for New Castle County*, 344 A.2d 225, 228 (Del. 1975).

Chapter 8: The Role of the Code Revisors.

Delaware statutes have been revised and collected into bound volumes, a process referred to as codification, under the legislatively mandated supervision of revisors. The first codification of Delaware laws in 1915 and the second in 1935 were products of this process. However, these Codes were not updated. Continuous code revision began in 1953 and continues to this day.

Under current law, two people who are licensed to practice law in Delaware are appointed by the Governor to serve as Code Revisors. Section 211 of Title 1 restricts the Code Revisors from altering the sense, meaning, or effect of any act of the General Assembly, but provides them with the power to do all of the following:

- (1) Renumber and rearrange sections or parts of sections.
- (2) Transfer sections or divide sections so as to give to distinct subject matters a separate section number, but without changing the meaning.
- (3) Insert or change the wording of headnotes.
- (4) Change reference numbers to agree with renumbered chapters or sections.
- (5) Substitute the proper section or chapter number for the terms "this act," "the preceding section" and the like.
- (6) Strike out figures where they are merely a repetition of written words and vice versa.
- (7) Change capitalization for the purpose of uniformity.

¹⁵⁹ *Id.* at 700.

- (8) Correct manifest typographical and grammatical errors.
- (9) Make any other purely formal or clerical changes in keeping with the purpose of the revision.

Section 211 provides that the Code Revisors should “omit all titles of acts, all enacting, resolving, and repealing clauses, all appropriation measures, all temporary or local statutes, all declarations of emergency, and all validity, declaration of policy, and construction clauses, except when the retention thereof is necessary to preserve the full meaning and intent of the law.” While these provisions may not be codified, the Code Revisors may direct they be provided in the annotations to the printed versions of the Code as Revisor’s Notes. The Laws of Delaware also contain all the provisions of a piece of legislation as enacted.

Issues with the legislation may not be corrected by the Code Revisors. Even if corrected, the decision of the Code Revisors may not fulfill the intention of the drafter or the client. Poorly drafted legislation that requires the Code Revisors’ attention is subject to the choices made by the Code Revisors. If presented with grammatically incorrect language or conflicts within the legislation, the legislation and its amendments, or the legislation and the Code, the Code Revisors must make a choice. Sometimes that choice will coincide with the drafter’s intention, sometimes it will not. In the worst cases, the Code Revisors will choose not to make a decision and the legislation will not be codified at all. Since the bulk of the General Assembly’s legislation is passed in weeks leading up to June 30th, the Code Revisors’ decision is often made months after the General Assembly’s June 30th recess. This makes it difficult, if not impossible, for the General Assembly to quickly correct the problem.

The number of errors in legislative drafting which the Code Revisors cannot correct has grown so large that Legislative Council recently authorized the Division of Research to draft annual technical corrections bills.

Moreover, legislation is often enacted because specific coalitions form at the necessary time for passage. Those coalitions may not be available to make the necessary changes to decisions made by the Code Revisors when the General Assembly reconvenes. Therefore, relying on a belief that the “Code Revisors will fix it” may result in the intent of the legislation being frustrated. A better course of action is to think of the legislation as the instruction manual for the Code Revisors and to ensure the instruction manual is accurate, clear, and uniform. This can be accomplished through adherence to this manual and good proofreading practices.

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APPENDIXES

APPENDIX A. Samples of Legislation

The sample legislation in Appendix A has been edited to reflect the rules and standards of this manual and, in some instances, edited for space. Additionally, the sample amendments have been altered to reflect the new amendment markup process. Therefore, these samples are not exact reproductions of the original legislation.

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A-1

SPONSOR: Sen. Washington & Rep. Adams
Sens. Jefferson, Madison, Monroe;
Reps. Quincy Adams, Jackson

DELAWARE STATE SENATE

174th GENERAL ASSEMBLY

SENATE BILL NO. 101

AN ACT TO AMEND TITLE 50 OF THE DELAWARE CODE RELATING TO SUBJECT MATTER OR TITLE OF THE CHAPTER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 01, Title 50 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 01. Definitions.

As used in this chapter:

(1) “This word” means:

a. Use “means” if a definition is intended to exhaust the meaning of the defined word.

b. More language defining the word, ~~including, but not limited to~~ including all of the following:

1. Remembering to end lists with periods instead of semicolons.

2. Remembering never to use “including, but not limited to” because using the language used in line 7 is the preferred drafting method if you mean “and”.

3. If, however, you mean “or,” the language on line 5 would read, “including any of the following”.

Section 2. This Act shall go into effect on January 1, 2020.

SYNOPSIS

This Act does X, Y, and Z by requiring A, B, and C.

This Act also makes technical corrections to conform existing law to the standards of the *Delaware Legislative Drafting Manual*.

Author: Sen. Washington

Page 1 of 1

AB: CDE: FGH
55512345678

February 30, 2019



A-2

SPONSOR: Rep. Van Buren & Rep. Harrison & Sen. Tyler;
Reps. Polk, Taylor, Fillmore; Sen. Pierce

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE BILL NO. 101

AN ACT TO AMEND TITLE 50 OF THE DELAWARE CODE RELATING TO SUBJECT MATTER OR TITLE
OF THE CHAPTER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 01, Title 50 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows and by redesignating accordingly:

§ 01. Definitions.

As used in this chapter:

(1) "This word" means:

a. Use "means" if a definition is intended to exhaust the meaning of the defined word.

b. More language defining the word, ~~including, but not limited to~~ including all of the following:

1. Remembering to end lists with periods instead of semicolons.

2. Remembering never to use "including, but not limited to" because using the language used

in line 7 is the preferred drafting method if you mean "and".

3. If, however, you mean "or," the language on line 5 would read, "including any of the
following".

Section 2. This Act shall go into effect on January 1, 2020.

SYNOPSIS

This Act does X, Y, and Z by requiring A, B, and C.

This Act also makes technical corrections to conform existing law to the standards of the *Delaware
Legislative Drafting Manual*.

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February 30, 2019



A-3

SPONSOR: Sen. Buchanan

DELAWARE STATE SENATE

174th GENERAL ASSEMBLY

SENATE BILL NO. 101

SENATE AMENDMENT NO. 2

TO

SENATE BILL 101

1 AMEND Senate Bill No. 101 by deleting Section 4 thereof in its entirety and inserting in lieu thereof the
2 following:

3 "Section 4. Amend § 02 of Title 50 of the Delaware Code by making insertions as shown by underlining
4 and deletions as shown by strikethrough as follows:

5 § 02. Title of Section.

6 (d) This is the new language.".

7 FURTHER AMEND Senate Bill No. 101 by deleting Section 5 thereof in its entirety.

8 FURTHER AMEND Senate Bill No. 101 on line 66 by deleting "Delware" as it appears therein and
9 inserting in lieu thereof "Delaware".

SYNOPSIS

This Amendment does X, Y, and Z by requiring A, B, and C.

Author: Sen. Buchanan



A-4

SPONSOR: Sen. Lincoln

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 3

TO

HOUSE BILL NO. 101

1 AMEND House Bill No. 101 by deleting lines 24 through 27 in their entirety and inserting in lieu thereof
2 the following:

3 “(f) This is a new subsection, including all of the following:

4 (1) Remember to format your lists properly. This indentation level is at .5”.

5 (2) Remembering to end lists with periods instead of semicolons.

6 (3) Remembering never to use “including, but not limited to” because using the language used in line 5
7 is the preferred drafting method if you mean “and”.

8 (4) If you mean “or,” the language on line 5 should read, “including any of the following” to indicate
9 that any one item in the list can apply on its own.”.

SYNOPSIS

This Amendment does X, Y, and Z by requiring A, B, and C.



A-5

SPONSOR: Rep. Johnson

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1

TO

HOUSE AMENDMENT NO. 1

TO

HOUSE BILL NO. 101

1 AMEND House Amendment No. 1 to House Bill No. 101 by deleting lines 1 through 3 in their entirety and
2 inserting in lieu thereof the following:

3 “AMEND House Bill No. 101 by deleting lines 13 and 14 in their entirety and substituting in lieu thereof the
4 following:

5 (a) This is the new language.”.

SYNOPSIS

This Amendment provides that X, Y, and Z shall occur, by requiring A, B, and C.



A-6

SPONSOR: Sen. Grant

DELAWARE STATE SENATE

174th GENERAL ASSEMBLY

SENATE AMENDMENT NO. 1

TO

HOUSE BILL NO. 101

1 AMEND House Bill No. 101, as amended, on line 82 of House Bill No. 101 by inserting "This new
2 language and" after the period therein.

3 FURTHER AMEND House Bill No. 101, as amended, by deleting lines 8 and 9 of House Amendment No.
4 1 to House Bill No. 101 in their entirety and inserting in lieu thereof the following:

5 "(11) Remember to format your lists properly. This indentation level is at .5 inches.

6 (12) Remembering to end lists with periods instead of semicolons.".

SYNOPSIS

This Amendment provides that X, Y, and Z shall occur, by requiring A, B, and C.

Author: Sen. Grant



A-7

SPONSOR: Rep. Hayes & Sen. Garfield
Rep. Arthur; Sens. Cleveland, Harrison

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE BILL NO. 101

AN ACT TO AMEND CHAPTER 001, VOLUME 100 OF THE LAWS OF DELAWARE RELATING TO
SUBJECT MATTER OR TITLE OF CHAPTER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

- 1 Section 1. Amend § 01, Chapter 001, Volume 100 of the Laws of Delaware by making deletions as shown
2 by strike through and insertions as shown by underline as follows:
3 The provisions of this Act sunset at 11:59 p.m. on ~~June 30, 2014~~ June 30, 2020, unless such provisions are
4 reestablished by an Act of the General Assembly.

SYNOPSIS

This Act extends the sunset provision in Chapter 001, Volume 100 of the Laws of Delaware from June 30, 2014 to June 30, 2020.



SPONSOR: Sen. Cleveland & Rep. McKinley & Rep.
Roosevelt

DELAWARE STATE SENATE

174th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 102

AN ACT TO AMEND TITLE 52 OF THE DELAWARE CODE RELATED TO SUBJECT MATTER OR TITLE
OF CHAPTER BEING AMENDED, WHICH IS AN EXACT COPY OF THE TITLE OF THE ORIGINAL BILL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 001 of Title 52 by making deletions as shown by strike through and insertions as shown by
2 underline as follows:

3 § 005. Title of subsection.

4 (a) Remember to format lists properly. This indentation level is at .00".

5 (1) This indentation level is at .25".

6 (2) Remember to end lists with periods instead of semicolons.

7 (b) This is another sentence.

8 (c) This is another sentence that distinguishes this substitute from the original bill.

SYNOPSIS

This Act provides that X, Y, and Z shall occur, by requiring A, B, and C.

This Act is a substitute for and differs from Senate Bill No. 2 by providing, stating, or specifying D and E.

Author: Sen. Cleveland

Original Bill
(substitute bill on previous page)



SPONSOR: Sen. Cleveland & Rep. McKinley & Rep.
Roosevelt

DELAWARE STATE SENATE

174th GENERAL ASSEMBLY

SENATE BILL NO. 102

AN ACT TO AMEND TITLE 52 OF THE DELAWARE CODE RELATED TO SUBJECT MATTER OR TITLE
OF CHAPTER BEING AMENDED.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 001 of Title 52 by making deletions as shown by strike through and insertions as shown by
2 underline as follows:

3 § 005. Title of subsection.

4 This is introductory language.

5 (a) Remember to format lists properly. This indentation level is at .00".

6 (1) Remember to end lists with periods instead of semicolons.

7 (2) This indentation level is at .25".

8 (b) This is another sentence because new Code language has no (a) without a (b).

SYNOPSIS

This Act provides that X, Y, and Z shall occur, by requiring A, B, and C.

Author: Sen. Cleveland



A-9

SPONSOR: Rep. Taft & Sen. Wilson;
Reps. Harding, Coolidge; Sens. Hoover,
F.D. Roosevelt

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE BILL NO. 101

AN ACT PROPOSING AN AMENDMENT TO ARTICLE MCL, § 01 OF THE DELAWARE CONSTITUTION
RELATING TO SUBJECT MATTER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all
members elected to each house thereof concurring therein):

- 1 Section 1. Amend Article MCL, § 01 of the Delaware Constitution by making deletions as shown by strike
- 2 through and insertions as shown by underline as follows:
- 3 § 01. Title of section.
- 4 Section 01. ~~Language being deleted.~~ Language being added.

SYNOPSIS

This Act is the first leg of a constitutional amendment that would eliminate X, Y, and Z and provide that A,
B, and C.



A-10

SPONSOR: Rep. Truman & Sen. Eisenhower;
Reps. Kennedy, Johnson; Sen. Nixon

HOUSE OF REPRESENTATIVES

175th GENERAL ASSEMBLY

HOUSE BILL NO. 101

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE MCL, § 01 OF THE DELAWARE CONSTITUTION RELATING TO SUBJECT MATTER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

1 WHEREAS, an amendment to the Delaware Constitution was proposed in the 174th General Assembly,
2 being Chapter 001, Volume 02, Laws of Delaware, as follows:

3 "AN ACT PROPOSING AN AMENDMENT TO ARTICLE MCL, § 01 OF THE DELAWARE
4 CONSTITUTION RELATING TO SUBJECT MATTER.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of
6 all members elected to each house thereof concurring therein):

7 Section 1. Amend Article MCL, § 01 of the Delaware Constitution by making deletions as shown by strike
8 through and insertions as shown by underline as follows:

9 § 01. Title of section.

10 Section 01. Language being deleted. Language being added."; and

11 WHEREAS, the proposed amendment was adopted by two-thirds of all members elected to each house of
12 the 174th General Assembly and was publicized in accordance with § 1, Article XVI of the Delaware Constitution.

13 NOW, THEREFORE:

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of
15 all members elected to each house thereof concurring therein):

16 Section 1. Amend Article MCL, § 01 of the Delaware Constitution by making deletions as shown by strike
17 through and insertions as shown by underline as follows:

18 § 01. Title of section.

19 Section 01. Language being deleted. Language being added.

SYNOPSIS

 This Act is the second leg of a constitutional amendment that would eliminate X, Y, and Z and provide that A, B, and C.



A-11

SPONSOR: Sen. Ford & Rep. Carter
Sens. Reagan, H.W. Bush; Reps. Clinton, W. Bush

DELAWARE STATE SENATE

174th GENERAL ASSEMBLY

SENATE BILL NO. 101

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE MCL, § 01 OF THE DELAWARE CONSTITUTION RELATING TO SUBJECT MATTER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

- 1 Section 1. Amend Article MCL, § 01 of the Delaware Constitution by making deletions as shown by strike
2 through and insertions as shown by underline as follows:
3 § 01. Title of section.
4 Section 01. Introductory language:
5 (8) Already-existing language, added language, the rest of this paragraph is already-existing language.

SYNOPSIS

This Act is the second leg of a constitutional amendment. This Act provides that A, B, and C will occur.

Author: Senator Carter



A-12

SPONSOR: Sen. Obama & Rep. Trump
Sen. Washington,; Reps. Adams, Jefferson

DELAWARE STATE SENATE

174th GENERAL ASSEMBLY

SENATE BILL NO. 101

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE MCL, § 01 OF THE DELAWARE CONSTITUTION RELATING TO SUBJECT MATTER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

WHEREAS, an amendment to the Delaware Constitution was proposed in the 174th General Assembly, as follows:

“AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, § 01 OF THE DELAWARE CONSTITUTION RELATING TO SUBJECT MATTER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Article MCL, § 01 of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 01. Title of section.

Section 01. Introductory language:

(8) Already-existing language, added language, the rest of this paragraph is already-existing language.” and

WHEREAS, the proposed amendment was adopted by two-thirds of all members elected to each house of the 174th General Assembly and was publicized in accordance with § 1, Article XVI of the Delaware Constitution.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

18 Section 1. The proposed amendment is hereby concurred in and adopted and shall forthwith become a part
19 of the Delaware Constitution.

SYNOPSIS

This Act is the second leg of a constitutional amendment. This Act provides that A, B, and C will occur.

Author: Senator Obama



A-13

SPONSOR: Rep. Madison & Sen. Monroe
Rep. Quincy Adams

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE BILL NO. 101

AN ACT TO AMEND THE CHARTER OF THE TOWN OF WHOVILLE RELATING TO SUBJECT MATTER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

- 1 Section 1. Amend Section 01 of the Charter of the Town of Whoville by making deletions as shown by strike
2 through and insertions as shown by underline as follows:
3 Section 01. Title of Section.
4 (c) The mayor of Whoville shall encourage all residents to drink hot ~~toddies~~ tea with lemon before the annual carol
5 singing event.

SYNOPSIS

This Act amends the Whoville Charter to provide that the mayor shall encourage all residents to drink hot tea with lemon before the annual singing event.



A-14

SPONSOR: Rep. Jackson & Sen. Van Buren; Reps. Harrison,
Tyler; Sens. Polk, Taylor

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE BILL NO. 101

AN ACT TO PROVIDE A SUPPLEMENTAL APPROPRIATION FOR THE FISCAL YEAR ENDING JUNE 30, 2020 TO THE DEPARTMENT OF GOVERNMENTAL GOINGS-ON FOR THE PURPOSE OF PROVIDING ADDITIONAL FUNDING FOR THIS AND THAT.

1 Section 1. An amount equal to [percentage or specified amount] of [specified fund, such as the General
2 Fund] is hereby appropriated to the Department of Governmental Goings-On for the purpose of providing additional
3 funding for This and That.

4 Section 2. The funds herein appropriated which remain unencumbered on June 30, 2020 revert to the
5 General Fund of the State of Delaware.

SYNOPSIS

This Act provides a supplemental appropriation of up to [percentage or specified amount] of [specified fund, such as the General Fund] for This and That. These funds are in addition to the budget appropriation and are intended to assist This and That, which lost such funding last year.

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February 30, 2019



A-15

SPONSOR: Rep. Fillmore & Rep. Pierce

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE RESOLUTION NO. 101

PROCLAIMING THE WEEK OF FEBRUARY 30 THROUGH FEBRUARY 37 AS “IMPOSSIBLE BUT ILLUSTRATIVE WEEK”.

1 WHEREAS, the purpose of this sample resolution is to demonstrate how to draft a simple resolution proclaiming a
2 week of honor; and

3 WHEREAS, all “Whereas” clauses except the last one end with a semi-colon and the word “and”; and

4 WHEREAS, the last “Whereas” clause ends with a period.

5 NOW, THEREFORE:

6 BE IT RESOLVED by the House of Representatives of the 174th General Assembly of the State of Delaware that
7 the week of February 30 through February 37 is proclaimed “Impossible but Illustrative Week”.

8 BE IT FURTHER RESOLVED that there can be multiple “Be It Resolved” lines.

SYNOPSIS

This Resolution declares the week of February 30 through February 37 as “Impossible but Illustrative Week”.



A-16

SPONSOR: Rep. Buchanan

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE RESOLUTION NO. 101

REQUESTING THE SECRETARY OF DOODADS TO ISSUE A REPORT ASSESSING HOW THE OPENING OF A WIDGET FACTORY IN WHOVILLE WILL IMPACT THE WHOVILLE ECONOMY.

1 WHEREAS, the purpose of this sample resolution is to demonstrate how to draft a simple resolution
2 proclaiming a week of honor; and

3 WHEREAS, all "Whereas" clauses except the last one end with a semi-colon and the word "and"; and

4 WHEREAS, the last "Whereas" clause ends with a period.

5 NOW, THEREFORE:

6 BE IT RESOLVED by the House of Representatives of the 174th General Assembly of the State of
7 Delaware that the Secretary of Doodads is hereby requested to provide a report to the General Assembly by
8 December 31, 2020, assessing how the opening of a widget factory in Whoville will impact the Whoville economy.

9 BE IT FURTHER RESOLVED that there can be multiple "Be It Resolved" lines.

SYNOPSIS

Whoville is planning to build a widget factory, which could have a significant financial impact on Whoville's economy. This Resolution asks the Secretary of Doodads to provide a report assessing how building a widget factory in Whoville will impact the Whoville economy.



A-17

SPONSOR: Rep. Lincoln & Sen. Johnson
on behalf of all Representatives;
on behalf of all Senators

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE CONCURRENT RESOLUTION NO. 101

COMMENDING THE EFFORTS OF WHOVILLE'S CITIZENS FOR ALWAYS REMAINING POSITIVE.

- 1 WHEREAS, the purpose of this sample resolution is to demonstrate how to draft a concurrent resolution; and
- 2 WHEREAS, all "Whereas" clauses except the last one end with a semi-colon and the word "and"; and
- 3 WHEREAS, the last "Whereas" clause ends with a period.
- 4 NOW, THEREFORE:
- 5 BE IT RESOLVED by the House of Representatives of the 174th General Assembly of the State of Whoville, the
- 6 Senate concurring therein, that citizens of Whoville are hereby commended for always remaining positive.
- 7 BE IT FURTHER RESOLVED that there can be multiple "Be It Resolved" lines.

SYNOPSIS

This Concurrent Resolution commends Whoville's citizens for always remaining positive.



A-18

SPONSOR: Sen. Grant & Rep. Hayes

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

SENATE JOINT RESOLUTION NO. 101

DIRECTING THE DEPARTMENT OF HAPPINESS TO ESTABLISH A PARTY COMMITTEE; DIRECTING THE DIVISION OF COFFEE TO ESTABLISH A FRAMEWORK FOR THE FREE DELIVERY OF COFFEE TO EVERY WHOVILLE CITIZEN; AND EXTENDING THE WORK OF THE KITTENS FOR EVERYONE TASK FORCE.

WHEREAS, the purpose of this joint resolution is to demonstrate how to draft a joint resolution; and

WHEREAS, all "Whereas" clauses except the last one end with a semi-colon and the word "and"; and

WHEREAS, the last "Whereas" clause ends with a period.

NOW, THEREFORE:

BE IT RESOLVED by the Senate and the House of Representatives of the 174th General Assembly of the State of Delaware, with the approval of the Governor, that the Department of Happiness shall establish a Party Committee, the Division of Coffee shall determine how best to implement a program to deliver coffee to every Whoville citizen free of charge, and the work of the Kittens for Everyone Task Force is extended to February 30, 2020.

BE IT FURTHER RESOLVED that there can be multiple "Be It Resolved" lines.

SYNOPSIS

This Joint Resolution directs the Department of Happiness to establish a Party Committee, in order to avoid further confusion over which state agency is responsible for the happiness of Whoville citizens; directs the Division of Coffee to determine how best to implement a program of free coffee delivery; and extends the authority of the Kittens for Everyone Task Force through February 30, 2020. In its last report to the General Assembly, it was revealed that 3 Whoville citizens still do not have kittens, as their pets have now grown into cats.

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**STANDARD FORM FOR A RESOLUTION
TO ESTABLISH A TASK FORCE
[or Study Committee or other *ad hoc* entity]**

- ☐ House or Senate Simple Resolution
- ☐ House or Senate Concurrent Resolution
- ☐ House or Senate Joint Resolution (with the Governor)

[TITLE:] ESTABLISHING THE _____ (name) _____ TASK FORCE TO STUDY AND MAKE FINDINGS AND RECOMMENDATIONS REGARDING _____.

[REASONS FOR NEED FOR TASK FORCE STATED AS WHEREAS CLAUSES]

WHEREAS, _____; and
WHEREAS, _____;

NOW, THEREFORE:

- ☐ **[SIMPLE RESOLUTION]** BE IT RESOLVED by the House of Representatives [by the Senate] of the [#] General Assembly of the State of Delaware that
- ☐ **[CONCURRENT RESOLUTION]** BE IT RESOLVED by the House of Representatives [by the Senate] of the [#] General Assembly of the State of Delaware, the Senate [the House of Representatives] concurring therein, that
- ☐ **[JOINT RESOLUTION]** BE IT RESOLVED by the House of Representatives [by the Senate] and the Senate [and the House of Representatives] of the [#] General Assembly of the State of Delaware, with the approval of the Governor, that

. . . the _____ (name) _____ Task Force (Task Force) be established to study and make findings and recommendations regarding _____ (same wording as title) _____.

[EXAMPLE OF A TASK FORCE MEMBERS LIST WHEN MEMBERS ARE NOT SERVING BY VIRTUE OF POSITION]

BE IT FURTHER RESOLVED that the Task Force be composed of the following members: **[THE PRIME SPONSOR SHOULD PROVIDE THE LIST OF MEMBERS.]**

- (1) Two members of the House of Representatives, appointed by the Speaker of the House.
- (2) Two members of the Senate, appointed by the President Pro Tempore of the Senate.
- (3) A representative of the Department of Agriculture, appointed by the Secretary of the Department.
- (4) One citizen from each county, appointed by the Governor.

[EXAMPLE OF A TASK FORCE MEMBERS LIST WHEN MEMBERS ARE SERVING BY VIRTUE OF POSITION AND ARE AUTHORIZED TO APPOINT A DESIGNEE TO SERVE IN THEIR PLACE]

BE IT FURTHER RESOLVED that the Task Force be composed of the following members, or a designee appointed in writing and in advance of a particular scheduled meeting or on a permanent basis by the member serving by virtue of position to serve at that member's pleasure:

- (1) The Chair of the Developmental Disabilities Council.
- (2) The Chair of the Criminal Justice Council.
- (3) The Speaker of the House.
- (4) The President Pro Tempore of the Senate.

[IF THE SPONSOR DESIRES A CHAIR TO BE DESIGNATED BY NAME OR POSITION IN THE RESOLUTION, USE THIS LANGUAGE:]

BE IT FURTHER RESOLVED that [designate by name or by position] is the chair of the Task Force.

BE IT FURTHER RESOLVED that the chair of the Task Force be responsible for guiding the administration of the Task Force by, at a minimum, doing all of the following:

- (1) Setting a date, time, and place for the initial organizational meeting.
- (2) Supervising the preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports of the Task Force.
- (3) Sending, after the first meeting of the Task Force, a list of the members of the Task Force and the person who appointed them to the President Pro Tempore of the Senate and the Speaker of the House of Representatives and to the Director of the Division of Research of Legislative Council.
- (4) Providing meeting notices, agendas, and minutes to the Director of the Division of Research of Legislative Council.
- (5) Ensuring that the final report of the Task Force is submitted to the President Pro Tempore of the Senate and the Speaker of the House of Representatives with a copy to [insert name of anyone else who should receive a copy, such as the Governor or a cabinet secretary] and to the Director and the librarian of the Division of Research of Legislative Council and to the Delaware Public Archives.

[AVOID, IF POSSIBLE, NOT DESIGNATING A CHAIR IN THE RESOLUTION. IF THIS CANNOT BE AVOIDED, USE ALL OF THE FOLLOWING LANGUAGE:]

BE IT FURTHER RESOLVED that [insert name of the temporary chair, often the prime sponsor in the Chamber where the resolution was introduced] set the date, time, and place for the initial organizational meeting.

BE IT FURTHER RESOLVED that the members of the Task Force choose a chair from among themselves at the initial organizational meeting.

BE IT FURTHER RESOLVED that when a chair of the Task Force has been designated, the chair be responsible for guiding the administration of the Task Force by, at a minimum, doing all of the following:

(1) Supervising the preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports of the Task Force.

(2) Sending, after the first meeting of the Task Force, a list of the members of the Task Force and the person who appointed them to the President Pro Tempore of the Senate and the Speaker of the House of Representatives and to the Director of the Division of Research of Legislative Council.

(3) Providing meeting notices, agendas, and minutes to the Director of the Division of Research of Legislative Council.

(4) Ensuring that the final report of the Task Force is submitted to the President Pro Tempore of the Senate and the Speaker of the House of Representatives with a copy to [insert name of anyone else who should receive a copy, such as the Governor or a cabinet secretary] and to the Director and the librarian of the Division of Research of Legislative Council and to the Delaware Public Archives.

[TASK FORCE PROVISION FOR VOTE REQUIREMENT FOR ACTION AND CREATION OF PROCEDURAL RULES]

BE IT FURTHER RESOLVED that:

(1) Official action by the Task Force, including making findings and recommendations, requires the approval of a majority of the members of the Task Force.

(2) The Task Force may adopt rules necessary for its operation.

[TASK FORCE PROVISION FOR SUPPORT STAFF]

BE IT FURTHER RESOLVED that [Senate caucus/House caucus/Division of Research/Controller General/ other state agency] be responsible for providing reasonable and necessary support staff and materials for the Task Force. **[IF A LEGISLATOR SERVES AS PERMANENT CHAIR, CONSIDER USING THE LEGISLATOR'S CAUCUS AS THE PROVIDER OF SUPPORT STAFF AND MATERIALS.]**

[TASK FORCE PROVISION FOR REPORT]

BE IT FURTHER RESOLVED that the Task Force report its findings and recommendations to [the President Pro Tempore of the Senate or the Speaker of the House of Representatives or both / all members of the House of Representatives/the Senate/ the General Assembly / the Governor/the Directors of the Division of Research and the Delaware Public Archives for public dissemination / other person or entity] by [insert date].

SYNOPSIS

This resolution establishes the _____ (name) _____ Task Force to _____ (same wording as title) _____.

NOTE: Appointments to a task force not made by the Senate President Pro Tempore or the Speaker of the House must be conveyed in writing to the Senate President Pro Tempore; the Speaker of the House; the Chair of the task force (if so named in the resolution); and to the Director of the Division of Research.

A task force which the General Assembly wishes to continue must be reauthorized by an appropriate resolution at the start of a new two-year session of the General Assembly. Similarly, task force which is unable to meet its originally authorized reporting deadline must prepare an appropriate resolution for introduction in the Senate or House to establish an extended reporting deadline.

This Standard Form does not comply with the requirement to double space legislation. This is a conscious decision of the editor in order to save space. When drafting in conformity with this Standard Form, the drafter should double space the legislation.

**STANDARD FORM FOR A RESOLUTION
EXTENDING THE DATE BY WHICH THE FINDINGS AND
RECOMMENDATIONS REPORT OF A TASK FORCE, A STUDY
COMMITTEE, OR SIMILAR *AD HOC* ENTITY IS DUE.**

[THIS RESOLUTION SHOULD BE OF THE SAME TYPE AS THE RESOLUTION THAT ESTABLISHED THE TASK FORCE, STUDY COMMITTEE, OR SIMILAR *AD HOC* ENTITY AND WITH SAME SPONSORS, IF POSSIBLE.]

[TITLE:] EXTENDING THE REPORTING DATE OF THE _____ (name) _____ TASK FORCE.

WHEREAS, the _____ (name) _____ Task Force was established under [HR/SR/HCR/SCR/HJR/SJR] No. _____ of the [#] General Assembly to study _____ and to make findings and recommendations based on the study; and

WHEREAS, the Task Force was directed to submit its findings and recommendations report to _____ (whomever) _____ by _____ (date) _____; and

WHEREAS, the Task Force has worked diligently on its study, but is not yet prepared to submit its report; and

WHEREAS, [AT SPONSOR'S REQUEST, INSERT ACTUAL REASON]; and

WHEREAS, the members of the Task Force believe that they will be able to submit the report by _____ (date) _____;

NOW, THEREFORE:

BE IT RESOLVED by the _____ (same as in original resolution) _____ that the date by which the findings and recommendations report of the _____ (name) _____ Task Force is due be extended to _____ (date) _____.

SYNOPSIS

This resolution extends the due date of the findings and recommendations report of the _____ (name) _____ Task Force from _____ (old date) _____ to _____ (new date) _____.

[YOU MAY ADAPT THIS FORMAT TO EXTEND THE LIFE OF A TASK FORCE FROM ONE GENERAL ASSEMBLY TO THE NEXT.]

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IMPORTANT DELAWARE CASES

News-Journal Co. v. Boulden, 1978 WL 22024 (Del. Ch. 1978); *Manigault v. Springs*, 199 U.S. 473 (1905); *Opinion of the Justices of the Supreme Judicial Court of Maine*, 673 A.2d 693 (Me. 1996): The current General Assembly cannot bind future General Assemblies or the House or Senate of a future General Assembly.

Opinion of the Justices, 251 A.2d 827 (Del. 1969): The Court finds that the constitutional quorum requirement in Article II, § 8 is not reduced by vacancies due to death, resignation, or otherwise.

State v. Dickerson, 298 A.2d 761 (Del. 1972): Use of severability (1 *Del. C.* § 308); ex post facto (U.S. Const. art 1, § 10).

New Castle County Council v. State, 688 A.2d 888 (Del. 1996): Intent of bill may be found in synopsis.

Wilmington Sav. Fund Soc. v. Green, 288 A.2d 273 (Del. 1972): Enrolled bill doctrine exception for checking the vote count to determine if a bill received the constitutionally required number of votes for passage.

Opinion of the Justices, 276 A.2d 736 (Del. 1971): Two-thirds vote required if a bill impliedly amends a municipal charter. Del. Const. art. II, § 19 and art. IX, § 1.

Klein v. National Pressure Cooker Co., 64 A.2d 529 (Del. 1949): Bill title requirement of fair and reasonable notice.

Kennedy v. Truss, 13 A.2d 431 (Del. Super. Ct. 1940): The body of a bill must be germane to the title of the bill.

State v. Hobson, 83 A.2d 846 (Del. 1951): Bill title need not include existing law being re-enacted in the bill.

Opinion of the Justices, 575 A.2d 1186 (Del. 1990): Three-fifths vote required for State to increase permit fees or license fees of any nature.

In re School Code of 1919 (Opinion of the Chancellor and Judges of Delaware on the Request of the Governor), 108 A. 39 (1919): “If the existence of the law depends upon the vote of the people or the will of one man even, it is an unconstitutional delegation of legislative power; but if the law is complete in and of itself, the fact that it provides for an acceptance of any of its provisions by certain states agencies does not make it a delegation of legislative power and, therefore, invalid.”

Opinion of the Justices, 249 A.2d 869 (Del. 1968): Three-fourths vote requirement is limited to appropriations made to “any county, municipality or corporation.” Del. Const. art VIII, § 4.

In re: Request by the 138th General Assembly for an Advisory Opinion, 672 A.2d 4 (Del. 1996): Members of Titles 23 and 24 boards or commissions are “public officers” for the purposes of holdover in Del. Const. art. XV, § 5; therefore, they can't be denied the right to participate, despite the expiration of their terms, until their successors are qualified to replace them.

Burpulis v. Director of Revenue, 498 A.2d 1082 (Del. 1985): Statutory construction: If a literal interpretation leaves a result inconsistent with the general statutory intent, look to general intent.

State ex rel. Ward v. Churchman, 51 A. 49 (Del. 1902): Statutory construction of statutes and constitutions: “offices” and “officers” mean State or county “offices” or “officers” only, unless explicitly or by necessary implication extended to officers of municipal corporations.

Spielberg v. State, 558 A.2d 291 (Del. 1989): Statutory construction: The provisions of 1 *Del. C.* § 306 have only “historical significance” and do not foreclose questions of manifest intent of our General Assembly; “inartful drafting,” search for legislative intent.

Brooks v. Taylor, 154 A.2d 386 (Del. 1959): Two-thirds vote if a bill enlarges the criminal jurisdiction of an inferior court. Family Court is an inferior court for the purpose of Del. Const. art. IV, § 28.

Evans v. State, 872 A.2d 539 (Del. 2005): The General Assembly cannot reverse a determination in a particular case, though it may prescribe a new rule for future cases.

Daniels v. State, 538 A.2d 1104 (Del. 1988): The “golden rule” of statutory construction provides “that the unreasonableness of the result produced by one among alternative interpretations of a statute is just cause for rejecting that interpretation in favor of the interpretation that would produce a reasonable result.”

AETNA Casualty and Surety Company v. Smith, 131 A.2d 168 (Del. 1957): In this case, the General Assembly created a tax whose proceeds were allocated for a special fund to be disbursed to fire companies. After finding the fire companies to be an arm of the county, the Supreme Court held that any appropriation of public money to a county, municipality, or corporation must receive a vote of three-fourths of the members elected to each branch of the legislature, whether that appropriation is direct or, as in this case, indirect.

* * * * *

Special acknowledgement to Rich Dillard for his diligence in compiling these cases.

BILL DRAFTING CHECK LIST

- | | |
|--|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> Is the prime sponsor's name at the upper right (Senator for a Senate Bill, Representative for a House Bill), along with the names of any co-prime sponsors and co-sponsors? Do you have the agreement of all those named to serve as co-prime sponsors or co-sponsors? <input type="checkbox"/> Does the bill have the number of the proper General Assembly and say "Senate Bill" if the prime sponsor is a Senator or "House Bill" if the prime sponsor is a Representative? <input type="checkbox"/> Are the line numbers running down the left-hand side of the page on each page of the bill? Bill title, enactment clause, and synopsis lines do not receive line numbers. Are the lines (and line numbers) all double spaced? <input type="checkbox"/> Does the reference to the portion of the Constitution (article), Code (title), or Laws of Delaware (volume and chapter) in the bill title accurately reflect the portion of the Constitution (article), Code (title), or Laws of Delaware (volume and chapter) amended in the body of the bill? <input type="checkbox"/> Is there an enactment clause? Does it say "BE IT ENACTED" rather than "BE IT RESOLVED"? Does the enactment clause have the proper majority required for passage (simple majority, 3/5, 2/3, or 3/4)? If a preamble ("whereas" clauses) is included, does it precede the enactment clause? And, is this the only enactment clause? <input type="checkbox"/> Does the bill use strike through to reflect deleted text and <u>underline</u> to reflect inserted text? Does the prefatory language, at minimum, state the portion of the Constitution, Code, or Laws of Delaware being amended and include "by making deletions as shown by strike through and insertions as shown by underline as follows"? <input type="checkbox"/> If a bill Section deletes text from the Constitution, Code, or Laws of Delaware, does the text exist where cited? After the deletion, does the remaining text still constitute a complete sentence? | <ul style="list-style-type: none"> <input type="checkbox"/> If a bill Section inserts text into the Constitution, Code, or Laws of Delaware, does the inserted text make sense where inserted (whether insertion is text within a sentence or an entire subsection, section, or chapter)? After the insertion, does the augmented text still constitute a complete sentence? <input type="checkbox"/> Does the internal hierarchy of new Code text comply with the Code's current internal hierarchy? <input type="checkbox"/> Do deletions or insertions impact internal references? If so, have corrections been made? <input type="checkbox"/> Is the effective date one which has already passed, or is shortly forthcoming? Is such a date intentional? If no effective date, is there a problem with the bill going into effect immediately? If multiple effective dates, is the entire bill covered? <input type="checkbox"/> Is there a synopsis? Does it bear any resemblance to what the title and body of the bill seem to do? Are there any glaring omissions? Is the "Author" of the bill listed (only applies to the Senate)? <input type="checkbox"/> Is the bill free from "track changes" formatting? Are lines or pages without text removed? <input type="checkbox"/> Has the bill been proofread by someone not involved in its drafting? Does the bill comply with the requirements in this manual, especially the Formatting and Drafting Rules? <input type="checkbox"/> Has the original Constitution or Code language in the bill been compared to the most current version of the Constitution or Code? <input type="checkbox"/> Has a conflict check been performed to ensure that already introduced legislation does not conflict with the bill? <input type="checkbox"/> Has every reference, internal and external, been checked for accuracy? |
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AMENDMENT DRAFTING CHECK LIST

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| <ul style="list-style-type: none"> <input type="checkbox"/> Is the prime sponsor's name at the upper right (Senator for a Senate Amendment, Representative for a House Amendment), along with the names of any co-prime sponsors and co-sponsors? Do you have the agreement of all those named to serve as co-prime sponsors or co-sponsors? <input type="checkbox"/> Remember, a Senator cannot co-sponsor a House amendment and a Representative cannot co-sponsor a Senate Amendment. <input type="checkbox"/> Does the amendment have the number of the proper General Assembly and say "Senate Amendment" if the prime sponsor is a Senator or "House Amendment" if the prime sponsor is a Representative? <input type="checkbox"/> Are the line numbers running down the left-hand side of the page on each page of the amendment? Synopsis lines do not receive line numbers. Are the lines (and line numbers) all double spaced? <input type="checkbox"/> Does the instructional language give the proper instruction regarding where in the bill and what text is to be deleted or inserted? <input type="checkbox"/> Does the amendment include quotation marks at the beginning and end of text to be inserted into or deleted from the bill? <input type="checkbox"/> Are punctuation marks properly placed within the quoted text when intended to be included in the bill and without the quoted text when intended to be part of the instructional language? <input type="checkbox"/> If an amendment deletes text from the bill, does the text exist where cited? After the deletion, does the remaining text still constitute a complete sentence? <input type="checkbox"/> If an amendment inserts text into the bill, does the inserted text make sense where inserted (whether insertion is text within a sentence or an entire subsection, section, or chapter)? After the insertion, does the augmented text still constitute a complete sentence? <input type="checkbox"/> Does the internal hierarchy of new Code text comply with the Code's current internal hierarchy? <input type="checkbox"/> Do deletions or insertions impact internal Code references? If so, have changes been made? | <ul style="list-style-type: none"> <input type="checkbox"/> Does the amendment seek to amend the same portion of the bill as another amendment? Conflicting amendments may be out of order and certainly will cause problems for the engrossment of the amendment and codification of the bill. Can the amendment be re-drafted so as not to conflict with another amendment (unless conflict is the drafter's intent)? <input type="checkbox"/> Is there a synopsis? Does it accurately describe how the amendment has changed the bill? Are there any glaring omissions? Is the "Author" of the amendment listed (only applies to the Senate)? <input type="checkbox"/> Is the amendment free from "track changes" formatting? Are lines or pages without text removed? <input type="checkbox"/> Has the amendment been proofread by someone not involved with its drafting? Does it comply with the requirements in this manual, especially the Formatting and Drafting Rules? <input type="checkbox"/> Has the original Constitution or Code language in the amendment been compared to the most current version of the Constitution or Code? <input type="checkbox"/> Does the bill need to be amended to reflect changes to the Constitution or Code language used in the bill that have occurred since the bill was introduced? <input type="checkbox"/> Does the bill need to be amended to account for any conflicting legislation that is currently introduced? <input type="checkbox"/> Does the first provision begin "AMEND"? Do all other provisions begin "FURTHER AMEND"? |
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RESOLUTION DRAFTING CHECK LIST

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| <ul style="list-style-type: none"> <input type="checkbox"/> Is the prime sponsor's name at the upper right (Senator for a Senate Resolution, Representative for a House Resolution), along with the names of any co-prime sponsors and co-sponsors? Do you have the agreement of all those named to serve as co-prime sponsors or co-sponsors? <input type="checkbox"/> Remember, a Senator cannot co-sponsor a simple House resolution and a Representative cannot co-sponsor a simple Senate resolution. <input type="checkbox"/> Does the resolution have the number of the proper General Assembly and say "Senate (Simple, Concurrent, or Joint) Resolution" if the prime sponsor is a Senator or "House (Simple, Concurrent, or Joint) Resolution" if the prime sponsor is a Representative? <input type="checkbox"/> Are the line numbers running down the left-hand side of the page on each page of the bill? Resolution title and synopsis lines do not receive line numbers. Are the lines (and line numbers) all double spaced? <input type="checkbox"/> Is there a title to the resolution? If the resolution proclaims a day, week, or month, is the proclaimed day, week, or month set off using quotation marks? If the proclaimed day, week, or month ends the resolution title sentence, is the period located outside of the quotation marks? <input type="checkbox"/> Is there a resolved clause? Does it say "BE IT RESOLVED" rather than "BE IT ENACTED"? Does the preamble ("whereas" clauses) precede the resolved clause? <input type="checkbox"/> If the resolution grants authority to the President Pro Tempore, Speaker, Minority Leaders, or any other member of the General Assembly to name a person to serve on a task force or other entity, does the resolution use the word "appoint" rather than "designate", "name", or another word? <input type="checkbox"/> If the resolution creates a task force, does it include a provision directing the task force to provide a list of its members, and the person who appointed them, following their first meeting, along with subsequent meeting notices, agendas, and meeting minutes, to the Director of the Division of Research? | <ul style="list-style-type: none"> <input type="checkbox"/> If the resolution creates a task force, does it include a provision requiring the task force to deliver a copy of any required report, when completed, to the attention of the Director and the librarian of the Division of Research of Legislative Council? <input type="checkbox"/> Has it been decided if the task force will require staff support? If staff support will be required, does the resolution state who is responsible for providing it? <input type="checkbox"/> Is the effective date one which has already passed, or is shortly forthcoming? Is such a date intentional? If no effective date, is there a problem with the resolution going into effect immediately? If multiple effective dates, is the entire resolution covered? <input type="checkbox"/> Is there a synopsis? Does it bear any resemblance to what the title and body of the resolution seem to do? Are there any glaring omissions? Is the "Author" of the resolution listed (only applies to the Senate)? <input type="checkbox"/> Is the resolution free from "track changes" formatting? Are additional lines or pages without text removed? <input type="checkbox"/> Has the resolution been proofread by someone not involved in its drafting? Does the resolution comply with the requirements in this manual, especially the Formatting and Drafting Rules? |
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Interpretation of Statutes

Note: This section has been added to the Appendix to provide drafters with an easy reference to a chapter of the Code that should be read and referenced by all drafters.

TITLE 1. General Provisions.

CHAPTER 3. Interpretations of Statutes.

§ 301. Rules of construction and definitions.

The rules of construction and the definitions set forth in this chapter shall be observed in the construction of this Code and all other statutes, unless such construction would be inconsistent with the manifest intent of the General Assembly, or repugnant to the Code or to the context of the same statute.

§ 302. Definitions.

In the construction of this Code and of all other statutes of this State, unless the context requires a different meaning:

- (1) “Adult” or “adult person” means a person of the age of 18 years or older.
- (2) “Child” means a person who has not reached the age of 18 years.
- (3) “Full age” means the age of 18 years or older.
- (4) “Grantee” includes every person to whom a freehold estate or interest is conveyed.
- (5) “Grantor” includes every person by whom a freehold estate or interest is conveyed.
- (6) “Infancy” means an age of less than 18 years.
- (7) “Infant” means a person who has not reached the age of 18 years.
- (8) “Inhabitant” means a resident in any place.
- (9) “Kin” and “kindred,” as applied to the descent of estates, signify kin or kindred by blood, and the degrees of consanguinity shall be computed by the civil law method; but collateral kindred claiming through a nearer common ancestor, shall be preferred to those claiming through a more remote common ancestor.
- (10) “Lawful age” means the age of 18 years or older.
- (11) “Minor” or “minor child” means a person who has not reached the age of 18 years.

(12) “Money” or “dollars” means lawful money of the United States.

(13) “Month” means a calendar month, unless otherwise expressed.

(14) “Oath” includes affirmation in all cases where an affirmation may be substituted for an oath, and “sworn” includes affirmed; and the forms shall be varied accordingly.

(15) “Person” and “whoever” respectively include corporations, companies, associations, firms, partnerships, societies and joint-stock companies, as well as individuals.

(16) “Person with a mental condition” includes every person with an emotional or psychiatric disorder or disability.

(17) “Real estate” or “real property” is synonymous with the phrase “lands, tenements and hereditaments.”

(18) “State” means the State of Delaware; and when applied to different parts of the United States, it includes the District of Columbia and the several territories and possessions of the United States.

(19) “Tavern” includes inn.

(20) “Under age” means an age of less than 18 years.

(21) “United States” includes its territories and possessions and the District of Columbia.

(22) “Will” means “last will and testament” and includes “codicil.”

(23) “Written” and “writing” respectively include printing and typewriting and reproductions of visual symbols by photographing, lithographing, multigraphing, mimeographing, manifolding or otherwise; but in all cases where the written signature of any person is by law required, it shall be the proper handwriting of such person, or if the person cannot write the person’s name, the person’s mark.

(24) “Year” means a calendar year, and is equivalent to the words “year of our Lord.”

§ 303. Words and phrases.

Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the English language. Technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.

§ 304. Words of number and gender.

- (a) Words used in the singular number include the plural and the plural includes the singular.
- (b) Words importing the masculine gender include the feminine as well, except as otherwise clearly indicated by the context.
- (c) All forms prescribed by law may be varied according to subsections (a) and (b) of this section.

§ 305. Classification and arrangement.

The classification and organization of the titles, parts, chapters, subchapters, and sections of this Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference or presumption of a legislative construction shall be drawn therefrom.

§ 306. Analyses of titles, parts, chapters, subchapters and sections; section headings; notes.

The various analyses set out in this Code, constituting enumerations or lists of the titles, parts, chapters, subchapters and sections of this Code, and the descriptive headings or catchlines immediately preceding or within the texts of the individual sections of this Code, except the section numbers included in the headings or catchlines immediately preceding the texts of such sections, do not constitute part of the law. All derivation and other notes set out in this Code are given for the purpose of convenient reference, and do not constitute part of the law.

§ 307. References.

- (a) Unless otherwise indicated in the context, references in this Code to titles, parts, chapters, subchapters or sections shall mean titles, parts, chapters, subchapters or sections of this Code.
- (b) Whenever any reference is made to any portion of this Code or any other law, the reference applies to all amendments thereto.

§ 308. Severability of provisions.

If any provision of this Code or amendments hereto, or the application thereof to any person, thing or circumstances is held invalid, such invalidity shall not affect the provisions or application of this Code or such amendments that can be given effect without the invalid provisions or application, and to this end the provisions of this Code and such amendments are declared to be severable.

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Bills with Super-Majority Vote Requirements

Constitutional Citation

Vote Requirement

Three-fifths (3/5) of all the members elected to each house

Article III, § 18

To override the Governor's veto.

Article VIII, § 6(c)

To appropriate funds from the 2% "Rainy Day Fund" "in the event of emergencies involving the health, safety or welfare" of Delaware's citizens.

Article VIII, § 6(d)

To appropriate from the Budget Reserve Account "such additional sums as may be necessary to fund any unanticipated deficit" or "to provide funds required as a result of any revenue reduction enacted by the General Assembly."

Article VIII, § 10(a)

To increase the effective rate "of any tax levied or license fee imposed by the State."

Article VIII, § 11(a)

To impose or levy a "tax or license fee."

Two-thirds (2/3) of all the members elected to each house

Article II, § 9

To expel a member of the House by House members or to expel a member of the Senate by Senate members.

Article II, § 19

To pass "laws relating to the laying out, opening, alteration or maintenance of any road or highway which forms a continuous road or highway extending through at least a portion of the three counties of the State."

Article III, § 20(b)

To determine "that the Governor is unable to discharge the powers and duties of his or her office because of mental or physical disability."

Article IV, § 1

To establish additional courts (not judges).

Article IV, § 28

To give jurisdiction to inferior courts or justices of the peace of "such ... misdemeanors as the General Assembly may from time to time ... prescribe."

Article VI, § 1

To impeach by the House; to convict by the Senate.

Constitutional Citation

Vote Requirement

Two-thirds (2/3) of all the members elected to each house (continued)

Article IX, § 1

To enact general incorporation laws and special acts of incorporation.

Article XVI, § 1

To amend the Delaware Constitution, which requires passage by two consecutive General Assemblies.

Article XVI, § 2

To present to the voters the question of whether or not there should be a State constitutional convention.

29 Del. C. § 912

To ratify amendments to the U.S. Constitution (noting, however, that since one General Assembly cannot bind a future General Assembly except by amending the Delaware Constitution, this vote requirement is advisory only: i.e., a future General Assembly, either explicitly or implicitly, could negate this “requirement” by a vote by a simple majority).

Three-fourths (3/4) of all the members elected to each house

Article VIII, § 3

To borrow money or create a debt “by or on behalf of the State,” except “to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debts.”

Article VIII, § 4

To appropriate money to or issue or loan bonds of this State to any county, municipality or corporation; to pledge the credit of the State by guaranteeing or endorsing the bonds or other undertakings of any county, municipality or corporation.

2 Del. C. § 1405(i)

The Delaware Transportation Authority may not issue bonds unless the General Assembly approves of the purpose for which the bonds are issued and the maximum amount of such bonds.

Required Super-Majority Votes

| Super-majority vote | Senate | House |
|----------------------------|---------------|--------------|
| 3/5 | 13 | 25 |
| 2/3 | 14 | 28 |
| 3/4 | 16 | 31 |

Glossary of Legislative Terms

H

AAB – An acronym meaning “as amended by.” It is used to indicate that legislation has been changed by an amendment.

ACT - A bill that has passed both Chambers of the General Assembly in identical form and has become law, with or without the Governor’s signature.

ADJOURNMENT - The termination of a legislative day or session. “Adjournment sine die” marks the final closing of a legislative session, which has been informally replaced by “recess to the call of the chair” in Delaware.

ADMINISTRATIVE CODE – A compilation of Delaware’s regulations. The Delaware Administrative Code is published entirely online by the Registrar of Regulations, an employee of the Division of Research, and is organized according to subject matter by title and section.

ADVISORY (LEGISLATIVE ADVISORY) – A list of the actions taken by the Governor on legislation that has passed both Chambers and been presented to the Governor for review and action. In terms of actions that may be taken, the legislation may be signed by the Governor, vetoed by the Governor, or neither signed nor vetoed by the Governor in which case it is enacted without the Governor’s signature. Each list includes the legislation’s number, title, and sponsors and the date of the action and, if applicable, the Laws of Delaware volume and chapter number assigned to the legislation. Constitutional amendments are included on this list, even though the Governor may not sign or veto them.

AGENDA - A list published daily by each Chamber of those bills and resolutions which have been scheduled for consideration.

AMENDMENT – A separate piece of legislation having the limited purpose of deleting or inserting text, or both, in an existing piece of legislation, which is usually a bill but can be another amendment that has yet to be attached to a bill.

APPROPRIATED SPECIAL FUNDS (ASF) – Fees that are collected and designated for a specific purpose to support program functions.

APPROPRIATION - A budget act that authorizes the spending of public money for specific purposes. The three major appropriation bills are:

Budget Bill – Legislation authorizing expenditures for all branches of State government. It is the main financial plan for the State in a given fiscal year.

Bond Bill – Also known as the Bond and Capital Improvements Act, it authorizes the issuance of bonds and funding for State infrastructure projects in a given fiscal year.

Grant-In-Aid Bill – An appropriation made by the General Assembly to help support the activities of any county, municipality, corporation, non-profit organization, or person providing services to Delawareans in a given fiscal year.

BILL - A proposed law under consideration by the General Assembly. Bills usually propose changes or additions to the existing statutory law, but can also be used to propose an appropriation, charter change, or constitutional amendment.

BODY (OF THE LEGISLATION) – The substantive and necessary portion of any legislation. The “Body” follows the “Be it enacted . . .” if it is a bill and the “Be it resolved . . .” if it is a resolution. If it is a bill, it may set forth the changes to the Delaware Code, the Delaware Constitution, the Laws of Delaware, or a municipal charter with one or more separate parts which are designated as “Section 1.”, “Section 2.”, etc. They are usually separated when they alter different portions of the Delaware Code, Delaware Constitution, Laws of Delaware, or a municipal charter. The body of the bill shows such changes by strike through for deletions and by underline for insertions. If it is a resolution, it accomplishes one of the purposes assigned to resolutions. If it is a bill, it may include optional parts also designated as “Sections”. The optional Sections of the body of a bill include the effective date, applicability clause, sunset clause, savings clause, grandfather clause, interpretation clause, severability clause, repealing clause, appropriations, and short title.

CALENDAR - A daily listing of legislative actions on bills and resolutions beginning with introduction and including those which have been reported from committee and are ready for final reading, debate, and vote by the full membership of a Chamber.

CAPTION – Also known as the “heading” of the legislation, it provides information such as the sponsors, Chamber of introduction, the specific General Assembly involved, e.g., the 148th General Assembly, the type of legislation, and the number assigned to the legislation.

CAUCUS - A group of legislators who associate together on the basis of membership in a political party or common interests, and meet to discuss policy and strategy and coordinate legislative efforts.

CHAMBER – (1) Generic term for the House or Senate; in its plural form it refers to both the House and Senate. (2) Official room for the meeting of the House or Senate.

CHARTER – The Act legally creating, known as “incorporating”, a municipality which lists general powers and restrictions of powers of that municipality.

CHARTER AMENDMENT – The mechanism used to change the charter of a municipality. A charter amendment takes the form of a bill.

CHIEF CLERK OF THE HOUSE - The chief administrative officer of the House of Representatives who is elected by that body. The Chief Clerk is not a Representative, but a full-time staff official whose duties include receiving and releasing all bills introduced in the House, recording all votes taken on the floor, and certifying the daily record of legislative action on bills and resolutions.

CODE - A compilation of Delaware’s laws. The Delaware Code is contained in a series of volumes organized according to subject matter by title, chapter, and section (e.g. Title 3, Chapter 11, and § 1102).

COMMITTEE – An appointed group of legislators who meet to consider and make recommendations concerning the disposition of legislation and conduct investigations on behalf of the House or Senate. The Speaker of the House and President Pro Tem appoint their members to the following types of committees:

Interim Committee - A committee established to study or investigate certain matters between regular sessions and to report its recommendation or findings to the next regular session.

Joint Committee – A committee composed of members from both Chambers (e.g., the Joint Sunset Committee).

Standing Committee – A committee appointed with continuing responsibility in a general issue area or field of legislative activity. (e.g. House Judiciary or Senate Executive). These committees are specific to and composed of members from one Chamber.

COMMITTEE REPORT – The official release of legislation from a committee signed by the members of the committee and indicating their opinions of the legislation as follows:

M – Legislation voted out of committee on its merits, meaning that legislator recommends the Chamber take action on the legislation, but the legislator does not take a position on what action should be taken.

U – Legislation voted out of committee as unfavorable, meaning that legislator recommends the full Chamber defeat the legislation.

F – Legislation voted out of committee as favorable, meaning that legislator recommends the full Chamber pass the legislation.

CONSTITUTION – The document containing Delaware’s founding principles and establishing the basic structure and power of Delaware’s government. The Delaware Constitution is divided into 17 Articles labeled using Roman numerals and each Article is subdivided into sections (§).

CONSTITUTIONAL AMENDMENT – The mechanism by which changes are made to the Delaware Constitution. The Delaware Constitution is amended by a bill passed by two-thirds of the members elected to one General Assembly (this is called an Act proposing or the “first leg” of the amendment) that is then passed by two-thirds of the members elected to the next succeeding General Assembly (this is called an Act concurring in or the “second leg” of the amendment). The Governor may neither sign nor veto a constitutional amendment.

CONSTITUENT - A citizen residing within the district of a legislator.

CONTROLLER GENERAL - The Controller General’s Office is a nonpartisan legislative agency that provides fiscal research and advice for the General Assembly. The Office’s responsibilities include participating in all hearings held by the Joint Finance Committee, Budget Director, and State agencies in connection with State finances and assisting the General Assembly in the discharge of its fiscal responsibility.

DEFEATED - Legislation which does not pass because an insufficient number of “aye” votes are accrued. Defeated legislation can be restored within three legislative days.

DEFERRED - Legislation which is delayed because of any number of reasons, including that insufficient information is on hand to deal with the matter; such legislation may require an expert witness, fiscal note, etc.

DIVISION OF RESEARCH - The Division of Research is a nonpartisan confidential legislative agency that provides bill drafting, legal research, bill service, and other legislative assistance and services to members of the General Assembly, state agencies, and the public.

EFFECTIVE DATE - The time when legislation goes into effect and begins to operate. In Delaware, unless there is a specific direction in the legislation itself, legislation is effective upon enactment. Enactment occurs when one of three events occur: (1) the Governor signs the legislation; (2) the Governor has failed to act on presented legislation within 10 days, Sundays excluded; or (3) three-fifths of the members of both Chambers have overridden the Governor’s veto.

ENACTED – Legislation that has received the required vote of both Chambers and has then been signed by the Governor, not signed by the Governor in accordance with Article III, § 18 of the Delaware Constitution (see “Enacted Without Signature”), or veto overridden by three-fifths of the total membership of each Chamber.

ENACTED WITHOUT SIGNATURE - Article III, §18 of the Delaware Constitution provides that legislation that the Governor has not acted upon, by either signing or vetoing, within 10 days of being presented to him or her, excluding Sundays, becomes law.

ENACTMENT CLAUSE - Located between the title of legislation and the body of the legislation, it formally expresses the General Assembly's will. The clause begins, "Be it enacted by the General Assembly of the State of Delaware".

ENACTMENT DATE – The date legislation becomes law. In Delaware, the enactment date is the date when one of three events occur: (1) the Governor signs the legislation; (2) 10 days, excluding Sundays, pass and the Governor fails to act on legislation that has been presented by the General Assembly; or (3) three-fifths of the members of both Chambers override the Governor's veto.

ENGROSSED LEGISLATION - Legislation in its final and official form with all approved amendments incorporated into the text of the original legislation.

ENGROSSMENT - (1) The process by which legislation is updated to incorporate amendments made to legislation as it progresses through the General Assembly. (2) A copy of engrossed legislation.

EXECUTIVE ORDER – Action by the Governor implementing his or her authority under the law.

FEE IMPACT STATEMENT (F/I) – An analysis of the financial impact to the public and state agencies based on legislation that creates a new fee or increases an existing fee. It is prepared by the Controller General's Office under § 913, Title 29 of the Delaware Code and attached to legislation that creates a new fee or increases an existing fee. A fee impact statement must contain all of the following:

- (1) An explanation of the purpose of the proposed new fee or fee increase.
- (2) A general identification of the persons, business entities, or organizations affected by the legislation.
- (3) The impact of the proposed new fees or fee increases on these affected persons, business entities or organizations.
- (4) The intended use by the agency of the revenues generated by the new fees or fee increases.

ENROLLMENT – The process by which a bill or joint resolution that has passed both Chambers is put into its final format and is prepared for transmission to the Governor, such preparation includes certification by the President Pro Tem and the Speaker and the Secretary of the Senate and the Chief Clerk of the House.

FISCAL NOTE (FN) – An analysis of the financial impact to the State of a piece of legislation. It is prepared by the Controller General's Office under Chapter 19, Title 29 of the Delaware Code. It is attached to legislation that authorizes expenditures not previously authorized within the annual budget or reduces revenues. If the legislation authorizes expenditures not previously authorized, the fiscal note must contain a 3 year projection of the fiscal impact of the legislation. If the legislation reduces state revenue, the fiscal note must include a 1 year projection of the impact of the loss of revenue.

FISCAL YEAR – The State’s accounting period, which begins July 1st.

FLOOR – The physical part of the Chamber reserved for legislators, current and former public officers, staff, and others granted “privilege of the floor” or permission to be in this part of the Chamber. In contrast, members of the public and other visitors are permitted to observe sessions from the gallery.

FLOOR MANAGER – The legislator in charge of discussing on the floor a specific piece of legislation from the other Chamber. The floor manager is usually the chair of the committee from which it was released.

GALLERY - The balcony of the Chamber from which visitors may view the proceedings.

GENERAL ASSEMBLY – The state’s legislative body. This, the correct name for Delaware’s legislative body, is the name assigned to the body by the Delaware Constitution.

HA or SA – An acronym for House Amendment or Senate Amendment.

HB or SB – An acronym for House Bill or Senate Bill.

HR or SR – An acronym for House Resolution or Senate Resolution, both are simple resolutions. HCR or SCR are acronyms for House Concurrent Resolution or Senate Concurrent Resolution. HJR or SJR are acronyms for House Joint Resolution or Senate Joint Resolution.

HS or SS - An acronym for House Substitute or Senate Substitute.

HOUSE - The shortened name for the House of Representatives. It consists of 41 members, each of whom is elected to a two-year term. All revenue generating legislation must begin in the House.

INTRODUCTION - The public presentation of legislation into the legislative process.

JOINT RULES - Rules governing joint procedures or operations of the House and Senate.

JOINT SESSION - A meeting of both the House and Senate in one Chamber.

JOURNAL - The official record of legislative proceedings in each Chamber.

LAW - The general term usually used for official acts of the General Assembly.

LAWS OF DELAWARE – Also known as Session Laws, it is a book and online compilation containing copies of all the bills enacted during a General Assembly and any other legislative or executive document required by Legislative Council. Once a bill is enacted, it is assigned its own chapter number within the current volume of the Laws of Delaware. Chapter numbers are assigned chronologically as bills are enacted. Example: Chapter 103 of Volume 79 is the 103rd piece of legislation enacted in the 147th General Assembly.

LEGISLATIVE COUNCIL - A joint committee made up of the leadership of both Chambers. The Chair alternates between the President Pro Tem in odd numbered years and the Speaker of the House in even numbered years. The Council oversees the work of the Division of Research and Controller General's Office and Legislative Hall as a whole.

LEGISLATIVE DAY - The convening of a Chamber to conduct official business. It differs from a calendar day in that it does not begin and end at a set time and can span multiple calendar days.

LEGISLATIVE SESSION (or SESSION)– (1) The period of time in which the General Assembly is convened in a calendar year for the purpose of lawmaking and consists of a regular session and may consist of one or more special sessions or extraordinary sessions. (2) The daily meeting of a Chamber.

Regular Session – The constitutionally required legislative session beginning on the second Tuesday of January and ending no later than the last day of June.

Special Session - A constitutionally permitted legislative session which requires the mutual call of the presiding officers of both Chambers. This normally occurs as June 30th turns into July 1 and is done by mutual call of the presiding officers of both Chambers under Article II, § 4 of the Delaware Constitution.

Extraordinary Session - A constitutionally permitted legislative session which requires the call of the Governor. Typically, this involves only the Senate as its purpose is usually to deal with judicial nominations. See Article III, § 16 of the Delaware Constitution.

LOBBYING - Attempts made by a person or group acting on behalf of themselves or others to influence legislation.

LOBBYIST – A person engaging in lobbying, either for pay or as a volunteer.

LOT - An acronym meaning “laid on the table”. It is an action that occurs on the floor for various legislative reasons, including a missing witness or a needed amendment.

LFT (or Lifted) - An acronym meaning “lifted from the table.” Legislation previously LOT is lifted for action by the Chamber or committee.

MAJORITY/MINORITY LEADER - The member chosen by each Chamber's political party caucus to lead it.

MAJORITY/MINORITY WHIP - The member chosen by each Chamber's political party caucus to encourage membership attendance, count votes, and sometimes oversee personnel.

MINUTES - Record of the proceedings of a committee. These must include the results of any committee votes and may include the reason for a member's dissent from a committee decision.

MOTION - A formal proposal made by a legislator on the floor or in committee requesting the Chamber or committee take a procedural action such as to table legislation or suspend rules.

MOTION TO LIFT DEFEATED - Legislation previously LOT failed to receive the vote required to lift it from the table for action by the Chamber or committee.

MTSR - An acronym meaning “motion to suspend the rules” (see “Suspension of the Rules”).

MUST LIST – A compilation of legislation prepared by the leadership of each Chamber’s majority caucus as the regular session draws to a close that the leadership determines must pass the other Chamber before legislative business is concluded on July 1.

NON-APPROPRIATED FUNDS (NSF) - Federal funds or grants used to support programs.

ORDER OF BUSINESS – The defined routine followed by a Chamber each legislative day.

OUT OF ORDER – Not in keeping with the Chamber’s parliamentary rules and procedures.

PER DIEM - Refers to attorneys and other staff who are hired on an as-needed basis, typically working only on legislative session days.

PETITIONED OUT - When a majority of the members elected to the Chamber sign a petition to remove legislation from a committee for action by the Chamber.

POINT OF ORDER – A question by a legislator to the presiding officer calling attention to a breach of order or the rules. This results in a ruling by the chair.

PWB – An acronym meaning “placed with the bill.” It is in reference to an amendment that has been introduced to be considered with the legislation and, therefore, it goes wherever in the process the legislation is.

PRE-FILE – (1) A mechanism used to introduce legislation before the opening of the legislative day. It takes the place of an introduction from the floor. (2) A list of all legislation that has used this mechanism to replace introduction from the floor.

PRESIDING OFFICER – The person designated to preside at a legislative session. Typically, the presiding officer is the Speaker in the House and the President (Lt. Governor) in the Senate.

PRESIDENT OF THE SENATE - The title given to the Lieutenant Governor in his or her capacity as the presiding officer in the Senate.

PRESIDENT PRO TEMPORE - The Senator elected to the position by a majority of the members elected to the Senate to run the mechanics of the Senate, including appointing committees and their members and assigning legislation to committee. The President Pro Tempore is commonly referred to as the “Pro Tem”.

QUORUM - The minimum number of members required to be present for the Chamber or a committee to perform its business. In the General Assembly, the quorum for each Chamber is a majority of all the members elected to the Chamber.

REGISTER OF REGULATIONS – A monthly publication available in print and online that provides notice of changes in agency regulations, whether new, modified, or repealed, together with supplemental information deemed appropriate by the Registrar of Regulations, an employee of the Division of Research.

REGULATION – A rule adopted by a state agency to implement, interpret, or prescribe law or policy or describe its procedure or practice requirements.

READING – The presentation of legislation before a Chamber. This is a formal procedure which requires the legislation be read by title. Unless rules are suspended, bills and joint resolutions must receive three readings:

First Reading – The first presentation of legislation by its title for consideration. This coincides with introduction and assignment to committee. Pre-filing legislation constitutes the first reading.

Second Reading – The second presentation of legislation. This coincides with the reading of the committee report for the bill or joint resolution. Legislation is now placed on the Ready List.

Third Reading – The final presentation of legislation by its title prior to discussion and a possible vote by the Chamber. Any amendments are considered at this stage prior to action on the legislation.

READY LIST – A compilation of legislation that, if required to go through committee, has been released by committee, and is available to be placed on an agenda for its third and final reading.

REASSIGNED - Legislation is sent from one committee to a different committee.

RECALLED – When legislation is returned to the originating Chamber, at its request, from the other Chamber or from the Governor.

RECESS – A temporary suspension of the proceedings during a legislative session. It usually lasts “until the call of the Chair”.

RECONSIDERATION, MOTION FOR – The process of reviving legislation that has been defeated. This must occur within three legislative days.

RESCINDED - Erases a roll call vote.

RESOLUTION - A resolution is the formal expression of the opinion, sentiment, or will of one or both Chambers of the General Assembly. There are three types of resolutions:

Simple Resolution – A simple resolution is passed by only one Chamber. The effect of its passage does not go beyond the bounds and the authority of that Chamber. It is used to govern the internal affairs of the Chambers, express congratulations or condolences, declare the sense of a Chamber on an issue, or create a task force.

Concurrent Resolution – A concurrent resolution is used to accomplish the same purpose in relation to the entire General Assembly that a simple resolution accomplishes for either the House or Senate singly. A concurrent resolution adopted by the General Assembly does not become a law, nor does it have the force and effect of law, nor can it be used for any purpose that requires the exercise of legislative power. It may create a joint task force.

Joint Resolution – A joint resolution is the most formal type of resolution. It has legal effect when it is passed by both Chambers and signed by the Governor. A joint resolution is not a law but is used to employ temporary measures and has the force of law while in effect. Disagreement exists if a joint resolution extends beyond the General Assembly that enacted it.

RETURNED - Legislation is sent back to committee, the ready list, or to the other Chamber.

ROLL CALL - Names of the members, called in alphabetical order, used to establish a quorum or take a vote on legislation or a motion before the Chamber.

RULES OF EACH CHAMBER - The parliamentary rules or procedure adopted by each Chamber to govern its legislative conduct and action.

RULING OF THE CHAIR – The decision of the presiding officer on a point of order or procedure.

SECRETARY OF THE SENATE – The chief administrative officer of the Senate who is elected by that body. The Secretary of the Senate is not a Senator, but is a full time staff official whose duties and status are equivalent to the Clerk of the House.

SENATE – Consists of 21 members. Each decade a Senator is elected to two 4 year terms and one 2 year term (with the 2 year term either at the beginning or end of each decade to allow for staggered terms) so as to allow for redistricting following the federal census. The Senate is responsible for confirming the Governor's appointments.

SIMPLE MAJORITY – (1) For a bill or joint resolution, simple majority refers to the requirement in Article II § 10 of the Delaware Constitution that no bill or joint resolution may pass a Chamber without the concurrence of a majority of all the members elected to that Chamber. Under the Constitution, a simple majority is 11 votes in the Senate and 21 votes in the House and is unaffected by vacancies in a chamber. (2) For simple and concurrent resolutions and motions regarding internal procedure of a chamber, simple majority may mean a majority of the members present.

SPEAKER OF THE HOUSE - The presiding officer of the House. The Speaker is a member who is elected to the position by a majority of the members elected to the House to run the mechanics of the House, including appointing committees and their members and assigning legislation to committee.

SPONSOR - A legislator who introduces or supports legislation and whose name is attached to the legislation. A sponsor may be any of the following:

Prime Sponsor - The originator of legislation. Legislation can only have one prime sponsor. This person introduces the legislation, shepherds it through committee and is responsible for floor managing it in his or her Chamber.

Co-Prime Sponsor – Additional originators of legislation who may have worked with the prime sponsor on the legislation or may assist with shepherding it in the same or the other Chamber.

Co-Sponsor – Additional supporters of a bill.

STRICKEN - Legislation removed from the legislative process by the prime sponsor.

SUBSTITUTE - A substitute replaces an introduced bill, but keeps the introduced bill's number and title.

SUNSET – The expiration of a law, not to be confused with the Joint Legislative Oversight and Sunset Committee.

SUPER MAJORITY - The Delaware constitutional requirement that a specific bill must pass a Chamber with the concurrence of three-fifths, two-thirds, or three-fourths of all of the members elected to the Chamber.

SUSPENSION OF THE RULES – A majority of all of the members of a Chamber may vote to take an action that otherwise would be prohibited by a rule of that Chamber.

SYNOPSIS – A statement that may include the intent of the legislation, a brief history of why the legislation was introduced, changes to existing laws or a description of the proposed new law, and how the legislation affects current law with its existing rights, liabilities, and proceedings. Because of this level of detail, Delaware courts have held that the synopsis of a bill is a proper source from which to obtain legislative intent.

TABLED IN COMMITTEE – The decision of a majority of the members of a committee that the legislation should not be released from the committee. The legislation is subject to being petitioned out of the committee.

TEMPORARILY DEFERRED – Legislation holding position on the agenda without being worked; probably awaiting an amendment.

TITLE - A statement of legislation's general purpose located at the very beginning of the legislation, in capital letters. The purpose of a title is to provide notice to the public of the subject matter of the legislation and the laws, if any, it affects.

VETO - The Governor's disapproval of a bill passed by the General Assembly. Unless overridden by a three-fifths vote of the total membership of each Chamber, a veto prevents a bill from becoming law.

VOICE VOTE - An oral expression of the members of the House when an amendment is presented. Members respond "aye" or "nay." The Speaker determines which side prevails. Under House Rule 39(d), any member can request a roll call vote be taken instead of a voice vote.

VOTE REQUIREMENT – The minimum number of votes required by the Delaware Constitution for a piece of legislation to pass one or both Chambers (See "Simple Majority" and "Super Majority").